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JANUARY, 1944

NINETEENTH REPORT of the JUDICIAL COUNCIL

CONTENTS OF THIS REPORT

ISSUED BY THE MASSACHUSETTS BAR ASSOCIATION, 5 PARK ST., BOSTON, MASS.

MASSACHUSETTS BAR ASSOCIATION

NOTICE OF ADJOURNED MEETING FEBRUARY 12, 1944

In accordance with notice published in the Massachusetts Law Quarterly for December, 1943, page 65, the Special Meeting of the Massachusetts Bar Association was held at 21 School Street, Boston, on Saturday, January 8, 1944, at 11:00 A. M. to consider proposed changes in the By-laws which were printed in the "Quarterly," following the notice of the meeting. A quorum of thirty members, needed for changes in by-laws, not being present, the meeting was adjourned until Saturday, February 12th, 1944 at 11:00 A.M. at the Headquarters of the Association at 5 Park Street, Boston. Members are requested to read the proposed changes, printed in the December "Quarterly," before the adjourned meeting and to send in comments if they cannot attend. Come and inspect the headquarters.

Following the meeting there will be a meeting of the Executive Committee.

FRANK W. GRINNELL, *Secretary.*

AN INTERESTING, INEXPENSIVE PRESENT FOR LAWYERS IN MILITARY AND NAVAL SERVICE

TWO HUNDRED AND FIFTY YEARS OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS. 1692–1942

(With 93 pictures of Justices since 1692.) 150 pages, $1.50

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This little volume, containing an unusual portrait gallery and the proceedings and historical addresses at the two hundred and fiftieth anniversary of one of the oldest American Courts, should interest, not only Massachusetts lawyers, but judges and lawyers elsewhere. Being half historical reading matter and half a picture gallery of a striking line of able judges since the 17th Century, it makes an interesting, unusual, *and inexpensive* present to send to men in the service. The book and the pictures will give them a brief account of an important part of the historical background of what they are fighting to protect and, for that reason, may help their morale and give them something interesting to think about.

Order it now as the price will go up if a second printing is needed. The edition is limited. Send check for $1.50 with your order payable to MASSACHUSETTS BAR ASSOCIATION, 5 Park Street, Boston, Mass.

REVISION OF FEDERAL CRIMINAL LAWS

A Letter to the Chairman of the Committee of Congress

January 29, 1944

Hon. Eugene J. Keogh
Chairman of the Committee on Revision of the Laws
House of Representatives
Washington, D.C.

Dear Sir:

In The American Bar Association Journal for January, 1944, the article by Charles J. Zinn, Esq. on the proposed revision of federal criminal laws contains a request for suggestions to be sent to you by the end of this month.

Without having had time for research, I submit the following suggestions for the consideration of your committee: I think it is obvious that there are too many crimes in this country, and that there is a constant tendency to increase them. 17th century New Englanders had a more discriminating sense of proportion, they drew a distinction between what they called "prudential" regulations for the violations of which some penalty was provided and the criminal law with its stigma of a criminal record in case of conviction. Today almost everything, even minor offences and so forth, are crime, crime, crime even with the absurd incident of possible future bearing on the credibility of the offender as a witness or his Civil Service record, etc. The modern justification for retaining the old plea of "nolo contendere" is to counteract to some extent the modern disease of calling everything crime with its incidental stigma. I presume that the multitude of regulations of federal bureaus may intensify the problem to which I refer. I have no specific cases in mind and merely suggest that your committee may wish to consider whether there is any step worth taking in the Federal system which can be taken by way of classification to revive the 17th century distinction between the violation of prudential regulations and the violations of the criminal law.

The use of the word "prudential" in connection with government regulations appears to have originated with Nathaniel Ward of Ipswich, Massachusetts, the draftsman of the Massachusetts Body of Liberties of 1641. In Liberty 66 it was used as the opposite of "criminal" in the provision recognizing the right of the freemen of a township to make by-laws "only of a prudential nature" with penalties not to exceed twenty shillings. The word still appears in the Massachusetts statute about towns. You will find the history of the word in the extract from an essay on the "Constitutional History of Boston" by C. W. Ernst reprinted in 13 Massachusetts Law Quarterly pp. 107–108, a copy of which I enclose for your convenience.

Of course in the seventeenth century, when life was relatively simple, these prudential regulations were limited in number and local in character. Today both the Federal and State governments are making, either by statute or through administrative bodies,

multitudes of regulations of the ordinary life of citizens with penalties for failure, or refusal, to comply with them. Many of these apply to traffic conditions and to all kinds of business and other details as to which the regulations are often either obscure or impractical, and the failure to comply with them is not criminal in nature. Yet these things are, or may be treated as, crimes. I think you may find many of these—including cases in which not even the Government knows the meaning of the law except by the assertion of somebody. I believe this seriously contributes to lack of confidence in law, in courts, and in government. I believe the nation and the states should consider reviving the 17th Century idea of "prudential" matters for current practical government. Government can conduct civil proceedings [even to collect fines]without criminal penalties *in terrorem*. Probably most active American citizens today are guilty of something or other miscalled a "crime," often without knowing it. It is ridiculous, if I am right.

Yours very truly,

FRANK W. GRINNELL.

NOTE

In Massachusetts violations of town by-laws under what is now G. L. Chap. 40, Sect. 21 appear to have been first *expressly* classified as "crimes" by St. 1801, Chapter 62 which provided for prosecution and recovery of the penalty "by complaint or information in the same way and manner *other criminal offences* are now prosecuted."

The procedure "by indictment" was not introduced into the statute until 1920 (see St. 1920, C. 591, Sect. 3) and seems to illustrate the tendency to emphasize criminality of everything in general laws.

Meanwhile, since 1793, C. 43, what is now G. L., C. 280, Sect. 1, has provided that "fines and forfeitures" for violation of ***statutes*** may be prosecuted for or recovered "by indictment or complaint *or by an action of tort in the name of the Commonwealth.*" The word "indictment" in this act dates back to St. 1800, C. 57.

It is perhaps, not entirely irrelevant to point out that until about 1814, or thereabouts, in England the death penalty was considered necessary for some 200 offenses, for public protection!

Of course, in many matters a criminal proceeding may be the only effective procedure, as in the case of non-support, but in many other matters, within the reasonable meaning of the word, "prudential," surely the criminal stigma is unnecessary and tends to cause states of mind in the public which, in the long run, are unhealthy. The unhealthy effect of indiscriminately making "criminals" out of juveniles, pointed out by Sir John Fielding in the 18th Century, was publicly realized in the 19th Century by the creation of juvenile procedure without criminal stigma. It seems time to realize that *reasonable* administrative methods, or civil proceedings, for enforcement of many laws and regulations without the criminal label, would be healthier for the adult population.

F. W. G.

CAN WOMEN APPEAL TO THE NEW APPELLATE DIVISION OF THE SUPERIOR COURT?

The act creating this division (St. 1943 c. 558) provides that it is "for the review of sentences to the state prison . . . except in any case in which a different sentence could not have been imposed." Certain questions have been discussed at the bar, particularly the question whether a woman can appeal. If a man and a woman are both found guilty of the same offense and both sentenced for 10 years, one to State Prison and the other to the Reformatory for Women, is the right of appeal limited to the man? The phrase "the state prison" appears to be used in the statutes in two senses — one the description of the institution as in G. L. c. 125, s. 11 and the other a description, or classification, of the grade of the offense, as in G. L. c. 274, s. 1, which provides that "a crime punishable by death or imprisonment in the state prison is a felony. All other crimes are misdemeanors."

When the state prison was first built about 1803 it was, we believe, used for both men and women. Some years later it was limited to men and women were sentenced to jails until the Reformatory for Women now described in G. L. 125, s. 30 was provided as the place "where all females convicted of crime . . . shall be imprisoned." A woman may be convicted of a "felony" within the definition above quoted, which would involve a sentence to "the state prison" if she were a man, but, being a woman, the state policy requires a sentence to the Reformatory for women which thus becomes, under another name, apparently, the female state prison for offenses of the grade of felony. While a sentence to the female prison, rather than to some other institution, may not be appealable because the reformatory applies to both felonies and misdemeanors, the length of sentence to the female institution for an offense of the grade of felony would seem to be appealable under the new act as a statute must be interpreted to provide equal protection of the law, in this respect, for both men and women. *Ex parte* Brown 151 Fed. Rep. 710. There seems nothing in *Moulton* v. *Com.* 215 Mass. 525 or *Platt* v. *Com.* 256 Mass. 539 in conflict with this view. Sentences of men under 30 to the Concord Reformatory for "felony" as defined in C. 274 § 1 (G. L. c. 125, s. 23) may, perhaps, be appealable for the same reason, if that is a "state prison" for men under 30. For a history of a "state prison sentence" see 7 Mass. Law Quart. No. 2, 91 and 6 M. L. Q. No. 5, 214.

F. W. G.

GRATEFUL ACKNOWLEDGMENTS OF GIFTS

We acknowledge, with appreciation, the receipt at headquarters of the Association, of a number of useful practice books and statutes, from legal authors, practicing lawyers, and representatives of the estates of lawyers, in response to the requests for such gifts on pages 1 and 2 of the Quarterly for December 1943. We respectfully ask for more, in order to increase the practical usefulness of the headquarters' library to members of the Massachusetts Bar Association, and, therefore, again call attention to pages 1 and 2 of the December Quarterly.

Public Document **No. 144**

December, 1943

NINETEENTH REPORT
Judicial Council of Massachusetts

FOR TABLES OF CONTENTS OF REPORTS 1 to 15, 1924 TO 1939 AND A LIST OF REPORTS OF COMMITTEES, COMMISSIONS AND OTHER MATERIAL RELATING TO THE HISTORY OF THE JUDICIAL SYSTEM SINCE 1780, SEE 15th. REPORT (1939) 93–108.

FOR THE HISTORY OF THE JUDICIAL COUNCIL AND ITS RECOMMENDATIONS AND RESULTS OF ITS WORK, SEE 14th. REPORT (1938) 43-73.

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Publication of this Document Approved by the Commission on Administration and Finance

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The Commonwealth of Massachusetts

DECEMBER, 1943

TO HIS EXCELLENCY, LEVERETT SALTONSTALL,

Governor of Massachusetts.

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the nineteenth annual report of the Judicial Council.

FRANK J. DONAHUE, *Chairman.*
NATHAN P. AVERY, *Vice-Chairman.*
JOHN E. FENTON,
JOHN C. LEGGAT,
WILFRED BOLSTER,
FRANK L. RILEY,
FREDERIC J. MULDOON,
ASA S. ALLEN
SAMUEL P. SEARS.

ACTS OF 1924, CHAPTER 244

As amended by St. 1927, c. 923, and St. 1930, c. 142

Now appearing as G. L. (Ter. Ed.) Ch. 221, §§ 34A-34C

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections—*Section 34A.* There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of thirty-five hundred dollars.

MEMBERS OF THE COUNCIL

FRANK J. DONAHUE of Boston, *Chairman*
NATHAN P. AVERY of Holyoke, *Vice-chairman*

JOHN E. FENTON of Lawrence
JOHN C. LEGGAT of Lowell
WILFRED BOLSTER of Wellesley
FRANK L. RILEY of Worcester
FREDERIC J. MULDOON of Winthrop
ASA S. ALLEN of Belmont
SAMUEL P. SEARS of Dedham

FRANK W. GRINNELL, *Secretary*, 60 State St., Boston

NINETEENTH REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

To His Excellency
LEVERETT SALTONSTALL
Governor of Massachusetts

The Judicial Council was created by St. 1924, Chapter 244 (*See copy printed on opposite page*), "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts."*

In July of this year Nathan P. Avery, of Holyoke, vice-chairman of the Council, was reappointed as a member of the Council for another term of four years. In September Abraham B. Casson resigned and Samuel P. Sears of Dedham was appointed to fill the vacancy.

RECOMMENDATIONS ADOPTED IN 1943.

The Judicial Council expresses its appreciation of the helpful and cooperative spirit in which its recommendations were received during the last session of the legislature by the committee on the judiciary, the committee on legal affairs, and other committees, by committees of the bar associations, and, when the matters finally came before you, by your Excellency in the joint effort of all to improve our system of administering justice. While the work of the Council has always received considerate attention, the results in action during the past year have exceeded the results in any previous year since the Council was created in 1924. After each of its annual reports some of the recommendations have been adopted in substance and in 1929 eleven of such were adopted. During the past year 20, or more, proposals were adopted (in addition to negative recommendations followed) and are now in effect in substance as follows:

Following the report on sixteen bills referred to the Council by

* In 1925, the legislature also submitted the following request to the council.

1925 RESOLVES, CHAPTER 27

"Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and, among other things, the advisability of increasing or of wholly removing the ad damnum limits of district court jurisdiction in civil cases; measures for discouraging frivolous appeals; measures for requiring parties to frame issues in advance of trial by greater specification in the declaration of what the plaintiff in good faith claims and greater specification in the answer of what the defendant admits or in good faith denies, with suitable penalties for frivolous or unfounded allegations and denials; ways and means for encouraging, so far as consistent with constitutional rights, trials without jury, including specifically an inquiry into the operation of the laws of Connecticut and Maryland relative to the waiver of jury trials in criminal cases; and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925)."

the legislature relating to attachments and trustee process, two acts recommended by the Council were adopted in place of the bills referred. These acts were St. 1943, Chapter 234, limiting the amount of attachments and St. 1943, Chapter 298, providing for attachments of property under conditional sales.

Following another report requested by the legislature, several important acts relating to the law of libel and dealing with truth as a defense, retraction, malice and its effect on damages, and "chain" libel suits were adopted as follows: St. 1943, Chapters 360, 361, and 365.

Various acts relative to the admission of evidence recommended by the Council were also adopted as follows: printed rules, etc., of public bodies and municipal ordinances and by-laws, Chapter 190, vital statistics, Chapter 228, declarations of deceased persons, Chapters 105 and 232; hospital records, Chapter 233.

In the 18th. Report, page 19, the Council recommended the repeal of Section 15a of the Employment Security Act for reasons there stated. Following the hearing before the Judiciary Committee and extended conferences with the Director of Social Security and his counsel, the Judicial Council prepared a new draft of Section 15a which was adopted by St. 1943, Chapter 373.

An act extending to divorce cases the requirement already existing in separate support cases, requiring leave of court before the names of third persons are inserted in the pleadings, was adopted by Chapter 196.

Resignation of fiduciaries by their guardians was provided for by Chapter 201.

The exclusive jurisdiction of District Courts of motor vehicle torts was repealed and concurrent jurisdiction restored by Chapter 296 and Chapter 437, provided that the Superior Court should retain jurisdiction of such actions brought in the wrong court by mistake prior to the repeal.

The Council recommended simplified procedure for mandamus and certiorari and submitted a draft act. The special commission on an administrative court considered this draft act in its report* and submitted a revised draft which the Council considered an improvement, and the draft prepared by the special commission, with certain slight changes, was adopted in Chapter 374.

Following the recommendation of the Council for a new experiment of an appellate session of the Superior Court for the summary review of sentences in criminal cases, the draft act, submitted by the Council, providing for such an appellate session was adopted in Chapter 558.

The provisions for weekly, instead of monthly, return days in the Superior Court for the entry of criminal appeals — a recommendation constantly renewed for twenty-three years since its first recom-

* House 1440, see p. 37 of this report of the Council.

mendation in the final report of judicature commission in 1920 — was adopted in Chapter 145.

A change in the procedure as to accessories after the fact, a recommendation renewed in the 18th. and in several earlier reports of the Council, had been referred to the Special Commission to consider the criminal laws appointed under Resolves, Chapter 48, of 1941. That commission, in its report (H. 1462 of 1943), supported the recommendation of the Judicial Council and the change was made by Chapter 488, which makes it necessary for a defendant to show affirmatively that he is within the relationships exempted by law.

An act providing for the consolidation of actions brought in different courts arising out of the same facts was adopted in Chapter 369.

A provision relative to procedure for leave to make foreclosure entries in order to adjust the practice to the 1942 amendment of the Soldiers and Sailors Civil Relief Act was adopted in Chapter 57.

A bill relative to the apportionment of funds received as a result of "salvage operations" of trustees after the foreclosure of mortgages was passed by both houses and submitted to Your Excellency. The bill was then recalled from Your Excellency and by resolve chapter 13 was referred to the Judicial Council with a request for consideration and report on or before May 17, 1943. The Council studied the bill and revised it and the bill, as thus revised, was passed without substantial change as chapter 389. The special report of the Council (Senate Doc. 488) containing the reasons and text of the revised draft is annexed in Appendix A (p. 38) for convenient reference concerning the history of that act.

A proposal for a mandatory opportunity to be heard on written request by a person against whom a criminal complaint is made before the issuance of process was opposed by the Council and the bill was modified to permit such opportunity in the discretion of the court, as provided in Chapter 349, thus recognizing, by a declaratory act, a common permissive practice.

By Resolves, chapter 6, the proposed "uniform" acknowledgment act, was referred to the Council. The Council promptly recommended, as an emergency act, the section providing for acknowledgments by persons serving in, or with, the armed forces which was adopted as chapter 160. The rest of the bill is discussed in this Report (p. 25–27).

Various negative recommendations of the Council against the passage of various bills referred by the Legislature for its consideration were also followed (see 18th. Report, pp. 15, 17, 18 and 42).

This record of the past year, in which some of the recommendations adopted were made for the first time in the last report and others had been pending from earlier reports of the Council during the periods from five or six to twenty-three years, emphasizes the

"continuous study" of the judicial system and its operation for which the Council was created and the fact not always recognized but stated in the 15th. Report (page 13) and again in the 18th. Report (page 7) that:

> "One of the functions of a judicial council is to submit the best proposals which they can think of to adjust this or that part of the judicial system, or of the methods of procedure, to meet the changing public needs of justice, as well as of the tax payers who pay the public cost — not with the expectation that these proposals will necessarily be adopted forthwith, but in order that they may be ready at hand as a basis for discussion and improvement when the public need is recognized sufficiently to stimulate action by the *courts* or the legislature."

As stated in previous reports it can never be repeated too often that every detail in the administration of justice affects in some way or other the lives of more individuals and the public purse and public confidence to a greater extent than many persons realize. There are no details which are not important to many people. While we are in the midst of war it is no time to stop even temporarily the continuous study and thinking about the administration of justice. On the contrary, the war conditions and the problems ahead after the war should stimulate the continuous and sustained thinking of the profession in order to meet the future conditions and problems which every community will face in the more or less near future.

The spread of the movement for Judicial Councils which was practically started by the report of the Massachusetts Judicature Commission in 1920, and the increasing activities of judicial councils in other states as well as the active work of the American Bar Association and other legal organizations, emphasize the fact that the work of the Council and the various bar associations in Massachusetts are merely part of a nation-wide movement, which has been developing constantly during the past thirty years so that the profession and the public are in a better position to face the needs of the future than they would have been otherwise.

The Nature of the Present Report

As the work of the Judicial Council is continuous, and necessarily so if it is to perform its function, the present report like the 15th. Report in 1939 and the 17th. Report in 1941, both of which appeared in the years when there was no approaching legislative session under our biennial system, calls the attention of the bench and bar and of the public to the matters referred to the Council by the legislature, and also contains discussions of other matters, in order to invite suggestions from any persons interested for the assistance of the Council in its study. As repeatedly stated, the Council needs and invites such suggestions from the bench, bar and public.

PRELIMINARY REPORTS ON MATTERS REFERRED BY THE LEGISLATURE

CHARITABLE CONTRIBUTIONS BY GUARDIANS FROM SURPLUS INCOME

By Resolves, Chapter 6 "the subject matter" of the following bill (House document 682) was referred to the Council for consideration and report in its annual report for 1944.

House . . . No. 682

"The probate court may upon application of the guardian of an insane person after notice to all interested persons authorize the guardian of such insane person to apply to the maintenance and support of any charitable institution or community or war fund or chest such portion as the court orders of the estate of the ward, which is not required for his maintenance and support."

We submit the following study and tentative recommendation at this time for the consideration of the bench and bar and invite comment and suggestions.

For centuries the English Chancellors exercised, in the King's name, the jurisdiction over the persons and estates of persons of unsound mind, whether described as "lunatics" or "idiots." It is obviously a normal jurisdiction for any "sovereign" authority in a civilized community; but it appears to have been first formulated by the "Statute of Prerogatives" in the reign of Edward II (17 E. II Chs. IX and X). Whether the jurisdiction was technically "prerogative" in its nature (like the jurisdiction to issue writs of mandamus, prohibitions, etc.) or "equitable" is a question of academic historical interest which need not concern us, at least in Massachusetts. In either case it was exercised by the chancellor and as a merged jurisdiction in Massachusetts for generations the lunacy jurisdiction has been recognized in the Probate courts. G. L. (Ter. Ed.) C. 201.

In the course of time in the exercise of this jurisdiction, the problem arose as to the disposition of the surplus income of a lunatic after every reasonable and proper expenditure had been made for his care and comfort. The most careful and complete study of this problem that we have found appears in an article in 1895 in 8 Harvard Law Review 472 by the late William G. Thompson and R. W. Hale of the Boston Bar. After stating the problem, that article began as follows:

"There are only a few reported cases in English jurisdictions, and scarcely any in the United States, defining the circumstances under which the guardian of a lunatic may spend a portion of his ward's income for objects not directly connected with the ward's maintenance. These cases announce with more or less

clearness a tolerably definite principle, though in a few the principle seems to have been wrongly applied. In emphasizing one proposition all the authorities are agreed. That proposition is, that before any portion of his income can be devoted to other purposes, the ward himself must be provided with every comfort that he requires or to which he has been accustomed. There must be no economizing for the purpose of making an allowance to needy relatives, or in order to save something for the next of kin. [see Ames J. in *May* v. *May*, 109 Mass. at p. 256.] But when the ward has been liberally provided for, if there is still a surplus of income, allowances may, under certain circumstances, be made to the lunatic's relatives and to certain other persons.

"The only principle that can produce coherency or consistency in making such allowances is the principle laid down by Lord Eldon, in *Ex Parte* Whitbread, 2 Mer. 99. Although it has not always been squarely followed by the courts, that principle, it is submitted, is this. Where there is no evidence of any settled intention of the lunatic before his insanity in regard to the matter, or of any intention formed during his rational moments, the court will presume that were the lunatic sane he would act in the matter as any reasonable and ordinarily generous man would act under the same circumstances. In none of the cases, not even in those where the court professes to make 'what the lunatic himself would do if he were sane,' the *ratio decidendi*, is any account taken of the idiosyncrasies of the lunatic, that is to say whether he was extravagant or careful, liberal or mean. Unless it can be shown that there is some special reason why the lunatic would not, if he were sane, assist the particular applicants in question, the court will dispose of his surplus property in accordance with the views of a reasonable and ordinarily liberal man, though such views would never be entertained by the lunatic if he were sane. The courts will not hear evidence on the question how a miser or a spendthrift, if he were sane, would dispose of his surplus income."

A connected line of cases relating, not only to lunatics, but to minors is illustrated by *Wellesley* v. *Duke of Beaufort*, 2 Russ. 1 (1827), in which Lord Eldon said:

> "In many great families the eldest infant is in possession of a large property; the younger infants have some little property; and in such a case the court does not measure the duty of maintaining the eldest child by looking at him only. And it considers that it is for his interest that his brothers and sisters should be brought up in respectable stations;" and he goes on: "We will go the length of giving them maintenance out of his provision as a part of the maintenance made for him, though to be applied to them."

See also Sir George Jessel's remarks in Re Weld, 20 Ch. D. at 457 (1882).

In another class of cases the courts have liberally performed the legal duty of the ward to support his wife and family. (See 8 Har. Law Rev. 476, note 2). This is obviously within the purpose of guardianship administration regardless of the fact that it is specifically recognized by Section 43 of Chapter 201.

Where definite charitable enterprises were begun or planned or

supported by a lunatic before his incapacity Lord Justice Cotton said in Re Whitaker, L. R. 42, Ch. D, at p. 126:

> "We often give out of the personal estate of a lunatic that which is mere bounty. That generally occurs in the case of charities where the lunatic has himself, while he was of sound mind, supported institutions of a charitable nature."

Illegitimate children have also been provided for, and an old and devoted but incapacitated servant of the ward. The procession of English cases down to 1895 appears in the article referred to.

We are not aware of any reported opinion of the Supreme Judicial Court of Massachusetts on the subject, but in the New York Supreme Court for Kings County in 1916 in the matter of Ida H. Mersereau, after a report by a referee, the court ordered $900 a year paid to an elderly aunt of the ward, with whom the ward had a most affectionate relationship.

In 1891 the Suffolk Probate Court (No. 86103) an allowance of $350 per annum was made for the ward's father.

Other cases in Suffolk appear as follows:

Suffolk Probate No. 54711, Sarah A. Deacon
Income used for the support of her children.

Suffolk Probate No. 61289, Susan L. Williams.
Income used for the support of her children.

Suffolk Probate No. 86103, Samuel T. Holmes.
Income used for the support of a father.

–45624
Suffolk Probate No. –92491, W. H. H. Cummings.
Income used for a sister and mother.

Suffolk Probate No. 110693, Elizabeth H. Little.
Income used for support of a sister.

Suffolk Probate No. 128590, Maria Matilda McClure.
Income used to continue a charity.

Suffolk Probate No. 141547, Horatio S. Greenough.
Income used to support a sister and an aged servant.

Suffolk Probate No. 160148, Mary O. Loud.
Income used for support of grandnephew and aunt of nephew.

Suffolk Probate No. 171714, Amos E. Lawrence.
Income used for support of niece of the insane person, decree by Judge Grant.

Also in Middlesex Probate No. 17252, Charles Wyman, an insane person, we find report of Henry E. Warner, special guardian, which was later confirmed by the court, ratifying annuities paid to members of the household of the uncle of the insane person and religious and social subscriptions made in the name of the insane person. As this report of Henry E. Warner contains a discussion of the authorities and was confirmed by the court we print it in Appendix B of this Report pp. 41.

Middlesex No. 78681 (1936) Petition for leave to give ward's interest in certain personal property to the Essex Institute and the Museum of Fine Arts.

Middlesex No. 18424 — Leave to guardian to contribute from income of insane person to Community Fund.

In connection with the Cummings case, above listed, a letter from the late Henry S. McPherson to Mr. Hale, of January 22, 1900, states that the late Judge Grant relied on the Harvard Law Review article in considering that case and a letter from Judge Grant himself to Mr. Hale, on May 10, 1909, shows that he applied the principle involved, not only to insane wards under guardianship, but to the wards of conservators. He wrote returning certain notes on the subject.

> "You may like to add to them the case of Horatio S. Greenough, Suffolk No. 141547, Nov. 12, 1908, in which I allowed a conservator to use surplus income for the support of a sister and an aged housekeeper whom the ward had previously supported, and also for the payment of annual charities to be selected as hitherto by the ward. Also Maria Matilda McClure, Suffolk No. 128,590 — 3 decrees of payments from principal to enable the ward (under conservatorship) to continue her charities, in the case of a rich woman whose property was largely in vacant land and where it appeared that to cut her off would injure her health in the opinion of physicians.
>
> Yours very truly,
>
> s/ Robert Grant."

From all this it appears as stated by Mr. Warner (see pp. 41) that the reasonable practice is established as a matter of law and repeatedly so recognized and followed in Massachusetts for at least fifty years of treating an irresponsible ward "as if he were not only a human being, but still retained a relation to society which could, to a certain extent, be recognized in this way. . . . payments of this character . . . seem to be such as would naturally be approved by the ward if he were to recover, and such as any reasonable person in his position in society and with his history would approve, if sane." It also appears that the principle and practice are not limited to legal obligations or to members of the ward's family.

With this background in the history of established law, we approach the proposed bill (H. 682) referred to the Judicial Council by the Legislature and quoted at the beginning of this discussion. The bill raises the question of the extent to be given to the practical application of the established principle. It proposes to include contributions authorized by the court ("after notice to all interested persons"), to the maintenance and support of any charitable institution or community or war fund of such portion as the court orders of the estate of the ward, which is not required for his maintenance and support."

We do not recommend the bill in the form in which it is drawn nor do we think any statute necessary, as the principle involved seems clear as a matter of law and the alternative methods of procedure heretofore followed also seem adequate. We do, however, believe that the bench and bar will find it convenient to have the result of our study of this somewhat unfamiliar field stated in this report for ready reference and accordingly we state what we believe to be the factors to be considered in connection with the application of the principle as follows:

In the first place it should be clearly understood that the principle involved is based on the assumption never to be forgotten, *that it is only after all reasonable and proper expenses for the care and comfort of the ward have been provided for that the principle comes into play at all*, and, even then, it does not turn the guardian or the court into a general "board of charity to canvass the merits of any person who thinks that he deserves a share of the lunatic's surplus income." It is to be assumed that, in applying this principle, courts will make the obvious distinction between use of surplus income, and inroads upon capital, which may, because of unforseeable changes in values or in the ward's needs, be required for his support. It is therefore, perhaps, needless to point out that a court should not authorize a gift of any portion of a ward's principal unless it is fully satisfied that there remains ample to take care of the ward's present and future needs.

In the second place, the principle applies not only to the performance of *legal duties* of the ward, but to moral, or other, obligations of "the reasonable man" in the ward's position.

In the third place the principle applies, as shown by the history above stated, not only to insane persons, but, at times, to minors presumably "spendthrifts" under guardianship and to weakened, or otherwise *financially* incompetent persons under conservatorship. In these latter cases as shown by Judge Grant's letter, the continuance of the ward's charitable contributions may have a direct bearing on the ward's health or "morale."

In the fourth place, with the changing conditions of modern life

the nature of the moral or other obligations recognized by "ordinary reasonable men" in the times and conditions and locality in which they live, may also change and develop beyond those thus recognized by individuals and courts in Lord Eldon's day and later in the 19th. century. "Community" or "war funds" representing the modern collective method of meeting problems of a community, which affect the interests of wards as much as they affect anyone else, seem clearly to come within the principle involved and we understand that the probate courts in Suffolk and Middlesex Counties have frequently recognized this by approving such contributions from time to time.

Incidentally a ward's estate will have the advantage of the deduction for such contributions made on his behalf in his income tax returns.

In the fifth place, as the practice hitherto has recognized that the propriety of such contributions may be passed on by the court either on a petition for approval in advance or on presentation of accounts after the contribution is made, we do not think a statute should be passed which limits, by implication, such approval to either time or procedure. If a guardian makes such a contribution with full realization of the interests of the ward and of the nature of his responsibility, as above explained, we see no reason why he should necessarily be required to petition for leave in advance with the incidental delay involved of notifying "all persons interested." With the exception of the ward there are no persons "interested" in such cases except the nearest person or persons "presumptively" interested. As pointed out by Ames J. in *May* v. *May*, 109 Mass. 109 Mass. at p. 256 they have no absolute rights and the primary problem for a court in any proceeding relative to a guardian's, or conservator's, estate is the normal interest of the ward.

Accordingly, as we believe the existing law, subject to the limitations above explained, adequately cover the purpose of the proposed bill, we believe for the reasons stated no legislation on the subject is necessary or advisable.

DISCUSSION OF STATUTES

In *Hicks* v. *Chapman*, 10 Allen at p. 465, Chapman J. said "a guardian's power is derived from the Commonwealth; its authority being delegated to the judge of probate." This was the position of the English Chancellor as already pointed out, but there was nothing new about the nature of the ancient idea of a "guardian." It is obviously a jurisdiction "equitable" in its nature as we understand the word "equitable" today. Chapter 201 contains various sections as to support of a ward's family and certain specified relatives but they do not limit the reasonable conduct of the ward's affairs or require

petitions for everything in advance. There was a short period between 1817 and 1820 when this old rule was changed and leave was required in advance before sale of property but that was repealed, and the present section 47 of C. 201 reads as follows:

> *"Sale of Personal Property of Ward.* — The probate court may upon the application of a guardian or conservator or of any person interested in the estate of a ward, after notice to all other persons interested, authorize or require the guardian or conservator to sell and transfer any personal property held by him as guardian or conservator and to invest the proceeds thereof and all other money in his hands in such manner as may be for the best interest of all concerned. Said court, after such notice, if any, as it may require, may make such further order and give such directions as the case may require for the management, investment and disposition of the estate in the hands of the guardian or conservator. (*1817, 190, s. 35; 1820, 54, s. 3; R. S. 79, s. 21; G. S. 109, s. 22; P. S. 139, s. 38; R. L. 145, s. 35; 1915, 23.*)"

That is substantially as provided in the act of 1820 and the Revised Statutes, Chapter 79. This was explained by Mr. Justice Morton in *Gardner* v. *Beacon Trust Co.*, 190 Mass. 27, at p. 31, as follows:

> "The provision comes in substance from St. 1820, C. 54, S. 3, except that it was there provided that the application should be made to the Supreme Court of Probate. St. 1820, C. 54, S. 3. Rev. Sts. C. 79, S. 21. Gen. Sts. C. 109, S. 22. Pub. Sts. c. 139, S. 38, R. L. C. 145, S 35. But the object of this provision was and is, we think, to furnish a way in which a guardian could protect himself and his sureties by obtaining in advance a judicial approval of the sale and investment, and not to require him to obtain a license from the court in order to sell and transfer personal property of his ward. This was the view taken by the commissioners on the revision of the statutes in 1834 (Report of Commissioners on Rev. Sts. C. 69, S. 11, note, and C. 79, S. 22, note), and is the construction which was in effect given to a similar statute in Mississippi by the Supreme Court of the United States in *Maclay* v. *Equitable Assurance Society*, 152 U. S. 499, and to our own statute by Woodruff, J. in *Wallace* v. *Holmes*, 9 Blatch. 65."

The last sentence of Section 47, above quoted, is as broad in scope as the established practice of guardianship administration dating back to the time of Lord Eldon, or before, just as G. L. C. 214, Section 1 recognizes "the general principles of equity jurisprudence."

The Massachusetts rule for the administration of trusts, which is now spreading over the country, was stated by Judge Putnam in 1830 in *Harvard College* v. *Amory* as the rule of the ordinary prudent man in the management of his own affairs and the foregoing discussion of the history of the guardianship principles shows that substantially similar tests govern guardians in representing their wards under the supervision of the Probate court, which functions in this

field as the chancellor. The established principles frequently applied by the Probate courts in Suffolk and Middlesex as already explained therefore seem a better guide for the courts than any attempt to "codify" the principles in a statute. Those principles are sufficiently broad and elastic to meet the changing conditions of life in the modern world and should not be limited by attempts to specify narrower applications of them. The situation seems peculiarly one in which the law should develop through practice in the fashion of the common law as suggested by John Winthrop in the 17th. century and reiterated by the Commission on the Practice Act of 1851* as well as by many judges and legal scholars.

As already stated, therefore, we believe the purpose of the proposed bill is sufficiently covered by existing law and no legislation is necessary to guide the reasonable discretion of the guardian and the probate courts.

MORTGAGE FORECLOSURES

By Resolves of 1943, Chapter 6, the legislature requested a report on "the subject matter of" Senate Bill 168 and by Chapter 8 requested a broader report as follows:

[CHAPTER 8]

RESOLVE PROVIDING FOR AN INVESTIGATION BY THE JUDICIAL COUNCIL RELATIVE TO THE FORECLOSURE OF MORTGAGES, AND CERTAIN RELATED MATTERS.

Resolved, That the judicial council be requested to investigate the subject matter of current house document numbered fourteen hundred and seventeen, relative to the foreclosure of mortgages of real estate, actions brought for the purpose of recovering deficiency judgments on notes secured by such mortgages, and the admissibility of evidence in such actions as to the fair market value of the mortgaged property, to investigate relative to the time within which such actions should be brought, and to investigate in general the duty of mortgagees to mortgagors of real estate in regard to foreclosure sales, and to include its conclusions and recommendations in relation thereto, with drafts of such legislation as may be necessary to give effect to the same, in its annual report for the year nineteen hundred and forty-four.

REPORT ON SENATE BILL 168

This bill would amend G. L. (Ter. Ed) C. 244, by striking out section 14 and inserting in place thereof Sections 14, 14A, 14B and 14C as set forth in the bill. The present sections 14 and 15 provide in substance that a mortgage containing a power of sale may be foreclosed by publishing notice of the sale once in each of three successive weeks, the first publication to be not less than twenty-one days

* The Commissioners (B. R. Curtis appointed shortly after a justice of the Supreme Court of the United States, Reuben A. Chapman later Chief Justice of Massachusetts and Nathaniel J. Lord, a leader of the Essex bar) said: "We believe one important lesson has been taught, that laws should be derived, not created, deduced by experience and careful observation from the existing usages, habits and wants of men."

before the day of sale and by recording an affidavit of sale within thirty days after the sale in the registry of deeds.

The bill would destroy this long established procedure and substitute a court action. The proposed Section 14 provides for a petition for leave to foreclose, on which the court determines the amount due. The defendant is given six months to pay with interest and costs and if paid the petition is dismissed. If it is not paid, the plaintiff may apply for judgment for sale. Prior to such judgment the court would order an appraisal by three appraisers, one to be appointed by the mortgagee, one by the mortgagor and one by the court. Their appraisal when filed would be the minimum price at the sale, and judgment for sale would be entered. No sale would be valid unless conducted in a manner tending to produce the highest price reasonably possible under the circumstances.

As to existing mortgages the bill seems unconstitutional. The question is whether such a law is advisable for future mortgages.

It is not clear when power of sale mortgages were first used in this country. New York passed a law in 1774 showing that they were then in use, but they did not come into general use until much later, but earlier than in England. For over eighty years the power of sale mortgage has been the common form used both in England and in New England, and in Massachusetts the use of any other form has been very rare. In the case of *Very* v. *Russell*, 65 N. H. 646, the court says: "We are unable to see upon what ground in the absence of legislative prohibition, the court can put a restriction upon the freedom of the citizen to contract for the sale of his land upon terms and in a mode stipulated in a mortgage, any more than upon his liberty to contract for its sale in any other way, or by stipulations contained in any other instrument."

In the case of *Kingsley* v. *Ames*, 2 Met. 29, decided in 1840, Chief Justice Shaw states, "It is clear that the sale of the mortgaged estate, being made in pursuance of a valid power given by the owner, vested in the purchaser an estate in fee, free from the original condition, and from any right of redemption."

In 1869 in the case of *Lydston* v. *Powell*, 101 Mass. 77, the court says, "The plaintiff's title under the mortgage and the sale of the premises in pursuance of the power of sale contained in it is valid as against the defendants' subsequent deed, conveying to him the equity of redemption."

St. 1857, C. 229, S. 1, provided for certain procedure in the exercise of the power and this statute with some changes has been re-enacted until the present statute above referred to. St. 1941, C. 25, as amended by St. 1943, Chapter 57, relates to procedure under the Soldiers' and Sailors' Civil Relief Act.

Power of sale mortgages have been in general use in England since

Lord Cranworth's Act of 1860 and the Conveyancing and Law of Property Act of 1881. The use of such mortgages in this country has gradually increased amoung the several states, although in some of trust having the effect of a mortgage.

There are many objections to the proposed bill. One is delay. Another is the additional expense which, in the end, would fall upon the mortgagor. The proposed provisions about obtaining the highest sale price would jeopardize almost every sale conducted under them. The bill runs counter not only to our established practice to which the people have become accustomed, but to the general current of legislation elsewhere. It would render difficult the making of mortgage loans and doubly difficult the obtaining of money with mortgage security. It would injure real estate development, including the building of homes, and money which would otherwise be loaned in Massachusetts would seek investment elsewhere. So far as fraudulent sales are concerned, our courts have adequately protected the interests of mortgagors.

The purpose of the bill is to protect against actual hardship. Such cases sometimes occur when mortgages amply protected by the real estate on which repairs are maintained, taxes and interest are paid, are foreclosed in an arbitary manner. Whether the courts should be given power to afford in such cases a longer breathing time in which the mortgagor could re-finance his loan is a question, and whether such legislation would do more good than harm is very doubtful. We believe it would do more harm than good and therefore we oppose the bill.

This brings us to the consideration of the other bill referred to us.

REPORT ON HOUSE 1417 (DEFICIENCY SUITS)

H 1417 would amend G. L. (Ter. Ed.) C. 231 by inserting after Section 95 a new Section 95A as follows:

> "In an action upon a promissory note secured by a mortgage of real estate, if the mortgage has been foreclosed by a sale of the real estate under a power of sale contained in said mortgage, at which sale, the mortgagee or its agent or a party acting as a straw, so called, for the mortgagee was the purchaser, the defendant may introduce, on the issue of damages, evidence of the fair market value of the mortgaged real estate at the date of said sale. Said market value, if found to be greater in amount than the amount of the proceeds of said sale, shall be credited to the defendant against the amount found due on said note, in lieu of the amount of the proceeds of said foreclosure sale."

Under the present law, if the conditions of the sale as set forth in the mortgage and controlled by statute are complied with, and there is no fraud, and the mortgagee exercises good faith, the obtaining of an inadequate price is no defense to an action on the mortgage note for the deficiency. Neither is it sufficient ground for setting aside the sale. This is not an equitable situation. In general, in such cases the mortgagor is unable to do very much for himself. He is

usually not able to bid in the property and he has to stand by and see it sold at a price which may be considerably below the fair market value. The uncertainty of the rule as to what is a fair bid at the sale and the opportunities for injustice may be seen by examination of the cases in the footnote.* In many cases the mortgage may be one of long standing, which the mortgagee has allowed to continue in force, although the market value of the security has from time to time decreased. If the mortgagor had sold the property to a purchaser who had agreed to assume and pay the mortgage, then the mortgagor has usually been out of touch with the mortgagee and in some cases has forgotten that he ever signed a mortgage note.

Some legislation of the nature proposed in the bill would seem to be desirable. The wording of the bill itself could be improved and if the principle laid down in the bill should be adopted as a basis for a suit in equity to set aside a foreclosure sale, there should be some time limit within which such a suit in equity could be brought. Suggested drafts of a fair bill which would not seriously affect mortgage loans will be welcomed.

Comments of the bar, and especially of the conveyancing bar, are invited with reference to this and any other matters relating to foreclosures under the broad terms of Chapter 8 of the Resolves above quoted. We suggest the reading of Mr. Joseph H. Cinamon's editorial in Law Society Journal for August 1943, 690–695 and Gelfert V. Nat. City Bank, 313 U. S. 221 sustaining the New York Act of 1938 on which the proposed bill is based. (See Law Society Journal for November 1943, 815–16.)

Penalizing "Fake" Motor Vehicle Claims (House 965)

Chapter 14 of the Resolves of 1943 requests the Council to investigate "the subject matter" of House Bill No. 965 and to include its conclusions and recommendations, if any, in the Council's annual report for 1944.

This bill proposes an amendment to G. L. C. 266, § 111A, which was enacted in 1926. In substance this section provides that whoever, "in connection with or in support of" a claim under a policy of *fire* insurance and "with intent to injure, defraud or deceive" the company, (1) presents to it, or (2) aids or abets in or procures the presentation to it, of any *written document*, knowing that it "contains any false or fraudulent statement or representation" material to such claim, or whoever (3) with such intent prepares or (4) assists in preparing any such document "intended to be presented to any

*Clapp v. *Gardner*, 237 Mass. 187; *Gadreault* v. *Sherman*, 250 Mass. 145; *Austin* v. *Hatch*, 159 Mass. 198; *Brockton Savings Bank* v. *Shapiro*, 311 Mass. 695; *Karolsky* v. *Kaufman*, 273 Mass. 418; *Clark* v. *Simmons*, 150 Mass. 357; *Chartrand* v. *Newton Tr. Co.*, 296 Mass. 317; *Sandler* v. *Silk*, 292 Mass. 493; *Freedman* v. *Peoples Nat Bank*, 291 Mass. 168; *Gordon* v. *Harris*, 290 Mass. 482; *Lynn Five Cents Savings Bank* v. *Portnoy*, 306 Mass. 436; *King* v. *Bronson*, 122 Mass. 122.

such company in connection with or in support of any claim" under such a policy issued by it, knowing that it contains any such "false or fraudulent statement or representation," shall be punished, etc.

The above statute applies to fraudulent claims under policies of *fire* insurance only. House Bill No. 965 proposes to make it applicable also to "any policy of liability insurance which provides indemnity or protection against any loss by reason of the liability to pay damages to others *arising out of the ownership, operation, maintenance, control, or use of a motor vehicle*"

The proposed amendment would extend the statute to cover only one other limited class of policies, namely, certain motor vehicle liability policies.

The Insurance Commissioner favors the general purpose of the bill to eliminate fraudulent claims and thereby reduce motor vehicle insurance rates; but a person submitting "a written document" in regard to damage by a motor vehicle does not make a claim under a motor vehicle policy until he obtains a judgment against the insured and files a bill in equity to reach the insurance company's obligation. The commissioner has submitted to us an amendment of H. 965 to apply the penalty to a person making a fraudulent document "in connection with, or in support of, any claim, the liability for which is insured under any policy of liability insurance which provides indemnity," etc.

We have not yet reached a decision as to whether the present statute should be amended, or, if it should, whether an amendment should cover only the one class of policies described in House Bill No. 965 or should be broadened to include all policies of insurance. We will give the matter further consideration and report upon it more fully next year. In the meantime we invite suggestions.

Notice of Injury Caused by Defect in Ways (House 72).

By Chapter 31 of the Resolves of the current year the Judicial Council was requested to consider the subject matter of House Document No. 72 relative to the giving of notice of accidents caused by defects in ways and premises and to report with its recommendations in its annual report of the year 1944. In the current report, therefore, we make no recommendation, but invite comment on the proposed legislation.

The present law requires, in the case of a person injured by the artificial accumulation of snow or ice on private premises, as a condition precedent to the right to recover, that notice of the accident, containing certain details, shall be given within 30 days of its occurrence.

House Document 72 would amend the law to provide that if the owner of the premises is insured under an insurance policy covering his legal liability to pay damages sustained by any person on such

premises, want of notice shall not bar proceedings if it be shown that the insurer, insured, or any agent of either, had knowledge of the injuries, or if it be found that the insurer was not prejudiced by want of such notice. We can see no reason for discriminating, as the proposed bill does, against a person who is insured. It has been suggested that the constitutionality of an act discriminating against one class of citizens may be doubtful. The bill would practically force the insurer into the trial as a party, which is against the present policy of the law.

The legislative policy in recent years has been against encouraging snow and ice actions. Prior to 1896 a city or town could be held liable for certain defects in a public way caused solely by snow or ice. *Newton* v. *Worcester*, 174 Mass. 181, 184, and cases cited. This was changed by St. 1896, C. 540, now embodied in G. L. C. 84, § 17. This statute provides that, "A county, city or town shall not be liable for an injury or damage sustained upon a public way by reason of snow or ice thereon, if the place at which the injury or damage was sustained was at the time of the accident otherwise reasonably safe and convenient for travelers."

The present statute requiring notice in snow and ice cases to owners and others in control of private property (G. L. C. 84, § 21) was passed in 1908. The purpose of this statute was stated by the court in *Baird* v. *Baptist Society*, 208 Mass. 29, at page 32 thus:

"In our climate defects so far as caused by ice or show may be very transient; and the manifest purpose of this and similar statutes is to give to the person charged with neglect prompt notice, so that he may have a reasonable chance to examine into the cause of complaint and collect evidence of the facts."

Snow and ice cases offer a fertile field for the fabrication of evidence. It is often difficult for a defendant properly to investigate the merits of such a claim and to preserve his evidence, especially if weather conditions have changed, and this sometimes is true even though he has received the notice required by the present statute. This statute is in the nature of a statute of limitations (*Mulvey* v. *Boston*, 197 Mass. 178,184) and gives a defendant some assurance that there are no such outstanding claims against him running back of the statutory period for notice. The proposed amendment would eliminate this.

We believe the present statute a salutary one and do not favor the amendment embodied in House Bill No. 72.

PROPOSAL TO EXTEND THE SCOPE OF COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE (House 1116).

Chapter 11 of the Resolves of 1943 requests the Council to investigate "the subject matter" of House Bill No. 1116, and to include a report in the annual report for 1944.

Briefly stated, this bill proposes to amend G. L. C. 90, §§ 34A, 34D, 34F and 34G by striking out of each of these sections the words "with his express or implied consent" and adding after § 34F a new section providing in substance that, for any injury or death caused by the use of a motor vehicle without the express or implied consent of the person responsible for its operation, the limit of recovery be, if the vehicle is covered by a motor vehicle liability policy, the amount of coverage "required by law in such policy," or, if cash or securities have been deposited in accordance with § 34D, "the amount or value of such deposit."

In its present form the motor vehicle liability policy required by G. L. C. 90 covers the operation of the car (1) by the registered owner or (2) by his servants or agents within the scope of their employment or (3) by any other person operating the car with such registered owner's express or implied consent. Such a policy does not now cover a person operating the car without such express or implied consent of the registered owner — as, for example, a thief. The proposed bill would extend the coverage of the policy (or the deposit of cash or securities instead) to cover the operation of the car by any person whomsoever, regardless of the circumstances under which he acquired such control.

So far as we can discover there is no real need of the amendment covered by the proposed legislation, and we think it unnecessary and unwise.

Our motor vehicle liability insurance law in its present form marked, we believe, a decided step forward by affording, as it does, some assurance of compensation to one (or to the kindred of one) who, without his fault, is injured or killed as the result of the tortious operation of a motor vehicle. As a necessary concomitant, it also imposes upon the registered owner a considerable financial burden, considerably greater than is borne by such owners in most other states. We believe that this burden should not be increased, unless good cause therefor is shown. We submit this preliminary report on "the subject matter" of House Bill 1116 with a request for any suggestions for consideration by the Council before its final report in 1944.

COMPULSORY MOTOR VEHICLE INSURANCE AGAINST PROPERTY DAMAGE AND REGULATION OF OPERATION OF CARS BY NON-RESIDENTS—REPORT OF COMMISSION ON INTERSTATE COOPERATION AND BILL RECOMMENDED BY THAT COMMISSION—(HOUSE 1275).

By Resolves Chapter 11 the report of the Commission on Interstate Cooperation and the bill which it recommended was referred

to the Council with a request for a report in 1944. The report (of 22 pages) after discussing the subject contains the following recommendations.

A bill to carry out these recommendations is annexed to the report.

> "1. That our present automobile insurance law be amended so as to make insurance against liability for property damage in excess of $50 compulsory for both Massachusetts and out-of-state operators, for the latter after an interval of thirty days' operation, and to require reports of all accidents causing property damage.
>
> "2. That our law be further amended to require security or evidence of financial responsibility on the part of operators from other States who become involved in motor vehicle accidents in this Commonwealth prior to the end of the thirty-day period of operation, after which the requirement that they carry insurance against property damage would apply to them.
>
> "A bill to make these recommendations effective is appended to this report. (Appendix A.) This bill has been submitted to the Counsel to the Senate, and has been examined by him.

We reserve discussion of this subject for our next report and request suggestions. We urge those interested to read the report referred to and, in this connection call attention to the report of the Special Commission on the Compulsory Motor Vehicle Liability Insurance Law (Senate No. 280 of 1930, reprinted in 15 Mass. Law Quart. No. 3). That commission discussed the subject of non-resident cars on pages 30–32, and the question of compulsory insurance against property damage on page 108 and also on pages 24 to 26 in connection with a plan for "demerit rating". An earlier discussion appeared in the 4th report of the Judicial Council (pp. 42–43). We hope for helpful suggestions. Copies of the report of the Commission on Interstate Cooperation (House 1275 of 1943) may be obtained from the Legislative document room on the 4th floor of the State House.

The "Uniform Veterans Guardianship" Bill

This bill (Senate 283) was referred by the legislature to the Judicial Council for study by Resolves of 1943, Chapter 5. It is the act prepared by the National Conference of Commissioners on Uniform State Laws in 1928, adopted in a number of states and revised by the conference in 1942 and recommended for all states, with the approval of the American Bar Association. It is a bill of twenty-four sections which with an explanatory "preface" and notes to various Sections may be found in the 1942 "Handbook" of the National Conference. As the report of the council on the bill is not requested until the annual report of 1944, and as opinions differ

in regard to it, and especially to certain sections, as compared with our present law, we simply call attention to the reference and invite suggestions in regard to it, reserving further discussions for our 1944 report, after consideration of conflicting views. We have received a carefully prepared brief in support of the bill from Mr. Welsh, Chief Counsel for the Federal Veterans Bureau and a memorandum from Dr. Perkins, of the Massachusetts Department of Mental Health, in opposition, especially to Section 18, which provides for transfer of patients "from State to Federal institutions" and that an order by a court of competent jurisdiction of another state committing a patient to the Veterans Administration or other Federal agency "Shall have the same force and effect as to such person while in this state as in the state in which is situated the court entering . . . such order."

Section 13 requires "prior order of the court" for all investments "except . . . in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States." The need and advisability of this provision in Massachusetts has been questioned.

Section 4 provides that "No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family." As already stated in connection with the "uniform acknowledgment" act we do not believe in changing and, by so doing, confusing our Statutes *merely* for the sake of uniformity of language and suggestions as to how far the proposed act involves needed or desirable changes of substance will be welcome.

THE "UNIFORM ACKNOWLEDGMENTS ACT," SENATE 231 (referred to the Council for report by Resolves of 1943, C. 6).

The "Handbook of the National Conference of Commissioners on Uniform State Laws" for 1942 contains the following:

"Prefatory Note

"In 1892 the Conference of Commissioners on Uniform State Laws adopted an Act for the acknowledgment and execution of written instruments. In 1914 the Conference adopted an Act for the acknowledgment of written instruments taken outside the United States.

"These two Acts differed in many essential respects and at later sessions of the Conference it was concluded to rewrite the Acts so as to eliminate the confusion of inharmonious and contradictory provisions. The matter was accordingly referred to the appropriate section of the conference, which made an exhaustive study of the subject, as a result of which a Uniform Act was adopted at the 1939

Conference of the Commissioners on Uniform State Laws held at San Francisco, California, and which is now being presented to the Legislatures of the various states for adoption.

"In the Act adopted there is no attempt to say what instruments shall be acknowledged — the Act merely provides that where by the laws of the State the acknowledgment of an instrument is required to be made, it may be made in the manner and form now provided by the law of the State or in the manner and form as prescribed by the Act. It should be explained to the Legislatures that there is no attempt to repeal the existing laws on the subject but the Act proposed is merely permissive in that an acknowledgment may be made either in the manner and form now provided by the law of the state or in the manner and form fixed by this Act. Thus a modern, uniform Act is being proposed for adoption in those states which desire it, without any attempt to alter or change the existing form and method in the event that form or method should be preferred over that proposed.

"The Act likewise provides for the recognition within the State of acknowledgments made in other states, provided they be authenticated in the manner prescribed by Section 9 Sub-section 2 of the Act.

"In addition to the adoption of the Act by the Conference of Commissioners on Uniform State Laws, this Act has likewise had approval of the A.B.A. and it is accordingly recommended to the States for adoption in the strong belief that it represents a decided improvement in legislation on the subject.

"There is not only a demand for a more modern enactment on acknowledgments in many of the States, but more uniformity on the subject in all the states. This act will provide both without disturbing the existing law for those who want to use it.

"At the annual meeting of the Conference in Detroit, Michigan, in 1942, the Uniform Acknowledgment Act was amended by adding Section 11 which provides for acknowledgments by persons serving in or with the Armed Forces of the United States within or without the United States."

Report on the Bill.

As stated (in this Report p. 7) Section 11 of the proposed act relative to persons serving in or with the armed forces was promptly recommended by the Judicial Council as an "Emergency" act and adopted by the legislature at St. 1943 C. 160.

Report on the Balance of the Proposed Act.

We approach this act with the belief that it is a mistake to complicate and multiply our Massachusetts statutes by adopting new language *merely* for the sake of "uniformity" in a matter of this kind if our present statutes seem adequate and sufficiently "uniform" for all purposes within, or without, the Commonwealth.

Our present law is contained in G. L. Chapter 4, Section 6:

"Wherever any writing is required to be sworn to *or acknowledged*, said oath or acknowledgment shall be taken before a justice of the peace or a notary public . . ."

See also as to acknowledgments G. L. Chap. 183, Sections 30, 31, 32, 33, 41, 42 and Forms, S. 55 (Nos. 13, 14, 15 and 16).

House 231 provides for acknowledgments within the state, as at present, *or* as provided by the proposed act. Section 2 adds (1) a judge of a court of record, (2) a clerk or deputy clerk of a court having a seal, (3) Commissioner or register or recorder of deeds, (6) *a Master in Chancery or Register in Chancery.*

Many of the persons thus referred to are justices of the peace or notaries. There is no need of changing our statute to add to the list.

Proposed Section 4 would add to our Chapter 183, Section 30 (b) as to acknowledgments elsewhere within the United States (1) a clerk or deputy clerk of any federal court, (2) clerk or deputy clerk of any court of record of any state or other jurisdiction, (3) a Commissioner of Deeds. The words "Commissioner of Deeds" are not defined. Our present law specifies that the commissioner must be appointed by the Governor of this Commonwealth. We see no need of this provision here. It seems sufficiently covered by our Section 41 and by the last clause of Section 30(b) which reads "or . . . before any other officer therein authorized to take acknowledgments of deeds."

Proposed Section 3 of 231 adds by specification (1) Counsellor to or secretary of the Legation, Consular General, Commercial Attache, (2) a Notary Public of the country where the acknowledgment is made, (3) a judge or clerk of a court of record of the country where the acknowledgment is made. Some of these officers are already listed in our Section 30(c). It may be that the addition of the others to take acknowledgments is advisable in the manner suggested at the end of this report.

Proposed Section 5, of House 231 reads:

> "The officer taking the acknowledgment shall know or have satisfactory evidence that the person making the acknowledgment is the person described in and who executed the instrument."

Our long-used form of acknowledgment reads:

> "Then personally appeared the above named . . . and acknowledged the foregoing instrument to be his free act and deed before me."

This latter form obviously means that the person appearing is "known" or identified by "satisfactory evidence" as the person named. Otherwise the statement means nothing at all. Forms 13 and 14 which are permissive and not mandatory contain the words "known to me to be the person described," and form 15 also permissive contemplates the affidavit of a corporate officer as to his office. In practice, however, for generations in Massachusetts the shorter

form, which means what proposed Section 5 specifies, if it means anything at all, has been used and we see no reason to suppose that Section 5 would make a particle of difference in practice. Men who illegally take blank acknowledgments or acknowledgments of persons without any evidence of identification will continue to do so under any statute.

Proposed Section 6 is in substance the same as Section 31 of C. 183.

Proposed Section 7 refers to forms of acknowledgment and the language differs somewhat. Section 7 does not in our opinion add anything to the forms of acknowledgment set forth in C. 183, S. 55.

Proposed Section 8 requires that the certificate of the acknowledging officer shall be completed by his signature, his official seal if he has one, the title of his office, and if he is a notary public, the date of his commission expiration. This would add nothing of importance to the present law.

Proposed Section 9 of 231, (1) refers to acknowledgments within the state and says that acknowledgments made within the state or without the United States shall not require authentication if properly made in the place. This is new, we believe.

Proposed paragraph (2) of S. 9 of 231, adds nothing to our S. 33 of C. 183. We are not clear why the certificate of the secretary of state provided for as one alternative in our S. 33 is omitted. In Massachusetts the record of all notaries appears on his records here and it is common to use his certificate.

Proposed paragraph (3) of S. 9 — The substitution of the authentication by a certificate under the great seal of state or country affixed by the custodian of such seal, for the requirement in our present statute of a certificate under the seal of the secretary of state where the officer taking the oath resides, is a good one.

Proposed S. 10 of H. 231, does not seem to add anything to our present Sections 41 and 42 of C. 183.

Upon careful consideration we think our present law is substantially similar to the proposed law so that it is unnecessary and inadvisable to complicate our statute book by substituting its exact language for our own. Suggestions are invited.

The District Courts

The effect of war conditions is reflected in the figures for the past year in the following table, as compared with the previous six years. The figures for each court appear in the table opposite this page. Only the juvenile cases increased in number.

A Seven Year Comparison of Business Years from 1936–1943, Oct. 1 to Sept. 30

(This table does not include the business of the Boston Municipal Court)

For the figures as to each Court see insert facing this page.

	1936-37	1937-38	1938-39	1939-40	1940-41	1941-42	1942-43
Civil entered.....	75,680	82,715	80,998	78,152	78,966	73,723	48,242
Contract.....	27,890	30,271	30,968	30,735	31,069	29,374	22,254
Tort.....	32,260	35,886	34,016	32,759	35,133	31,760	16,978
Summ'y Process..	14,707	15,596	14,770	13,673	11,898	10,961	6,603
All other cases..	823	962	1,244	985	865	1,628	2,407
Rem. to S. Ct....	13,065	14,595	13,334	12,805	13,453	12,744	6,955
Rep. to Ap. Div...	312	267	294	260	305	304	149
Appeals to S.J.C..	38	36	24	28	22	23	20
Sup. Process.....	11,067	16,029	17,652	19,155	19,878	20,985	18,538
Small Claims.....	23,533	30,181	38,557	40,029	45,281	52,634	40,208
Criminal cases....	157,869	149,569	149,937	152,631	167,885	154,145	125,486
Crim. ap. to S.C..	5,050	5,375	4,867	4,372	4,637	4,057	3,527
Drunkenness.....	72,925	65,147	63,361	61,365	67,991	64,660	54,202
Op. under inf. intox. liq.....	5,532	4,613	4,409	4,456	5,119	4,077	2,677
Tot. Auto. cases..	45,762	47,694	48,568	54,016	64,197	54,551	38,942
Liquor cases.....	574	485	389	447	488	386	387
Juv. cases under 17 years.....	6,524	5,834	6,270	6,071	5,855	5,918	7,063
Tot.mot.tort cases	28,081	31,588	29,585	28,533	31,190	28,425	15,165
Removals by plf.	6,456	6,851	6,230	5,353	5,209	3,682	1,860
Removals by def.	4,929	6,175	5,470	5,984	6,822	7,880	4,147
Removals by both	115	50	51	33	44	28	40
Total	11,500	13,076	11,751	11,280	12,075	11,590	6,047
1943							
Neglected children	–	–	–	–	–	–	1,235
Inquests held....	–	–	–	–	–	–	77

THE COST OF DISTRICT COURTS

The problem of the cost of these courts is a constant and serious problem for the legislature and the public in connection with salaries and other details of their administration. In 1943 the joint committee of ways and means of the Legislature in pursuance of a legislative order filed an extended report containing a study of

STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1942 TO OCTOBER 1, 1943
AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee of District Courts

DISTRICT COURT	Civil Writs Entered	Contract	Tort	Summary Process (Ejectment)	All Other Cases	Removals to S. C. (Total of all removals)	Total Motor Tort Cases entered	Total removals of such to Superior Court	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases (total)	Operating under influence of intoxicating liquor	Intoxicating Liquor Cases	Juvenile Cases under 17 years
Worcester, Central	3,311	1,279	1,562	443	27	599	1,317	538	15	1	865	2,315	8,978	120	3,768	2,956	153	15	591
Springfield	2,801	1,593	766	415	27	449	657	388	3	0	1,305	1,875	11,877	96	4,154	4,902	124	19	245
Middlesex, 1st Eastern	3,880	2,061	1,436	369	14	500	1,263	451	6	0	1,425	3,169	3,179	53	1,398	863	85	9	277
Roxbury	1,353	89	407	843	14	117	350	101	0	0	1,206	1,581	9,084	473	3,539	2,605	74	49	800
Bristol, Third	1,785	501	560	293	431	264	513	236	5	1	215	1,259	2,631	69	1,064	245	71	34	292
Middlesex, 3rd Eastern	3,214	1,587	1,294	319	14	449	1,101	412	21	1	1,040	1,715	6,007	114	1,907	2,348	93	18	279
Dorchester	1,329	135	828	359	7	244	674	191	1	0	1,267	1,324	3,771	221	1,439	1,466	48	10	244
Lowell	1,212	576	518	113	5	204	473	186	10	1	266	1,399	2,412	41	1,741	313	41	5	83
Bristol, Second	1,194	482	500	202	10	312	465	249	2	1	219	829	2,855	88	1,181	652	29	14	253
Essex, Southern	2,101	1,007	775	274	45	299	667	240	4	2	550	1,293	2,761	130	1,158	617	79	15	159
Lawrence	974	444	458	65	7	187	425	174	2	0	296	467	2,579	57	1,721	296	71	9	112
Norfolk, East	2,081	1,210	643	206	22	197	597	174	4	0	1,155	1,997	3,985	74	1,901	1,333	128	0	252
Somerville	2,032	1,004	482	254	292	149	400	135	1	0	706	1,167	1,983	129	910	515	44	4	84
West Roxbury	535	98	224	210	3	60	195	56	7	0	641	1,029	2,512	105	789	1,343	20	6	159
Essex, First	1,511	895	353	72	191	178	307	142	9	0	420	898	1,487	107	1,002	183	52	0	134
Brockton	1,198	489	353	120	236	123	323	109	3	0	218	481	2,557	83	1,553	415	83	2	117
East Boston	685	104	420	150	11	133	378	118	0	0	391	666	2,965	63	1,608	368	16	7	285
Chelsea	1,484	361	892	225	6	244	892	202	4	1	596	885	2,117	114	961	639	32	19	181
South Boston	334	33	160	141	0	64	132	58	0	0	317	380	6,376	104	3,201	1,743	18	8	90
Essex, North Central	538	243	230	53	12	88	190	72	5	1	93	395	1,485	30	971	227	29	1	36
Holyoke	492	173	216	88	15	151	204	140	0	0	98	492	1,064	6	684	111	23	2	51
Hampshire	280	88	103	23	66	69	95	67	0	0	64	524	1,272	28	458	397	51	13	76
Middlesex, 2nd Eastern	1,305	835	345	113	12	126	306	118	2	2	432	836	2,311	55	780	1,036	62	6	140
Berkshire, Central	516	369	92	51	4	50	82	41	3	0	184	1,401	1,881	7	591	620	68	1	41
Bristol, First	526	112	125	66	223	65	97	45	0	0	45	286	1,865	96	509	571	51	5	95
Middlesex, 4th Eastern	864	529	270	63	2	147	263	135	3	0	485	707	1,601	56	738	1,135	79	0	75
Newton	1,019	665	268	72	14	132	233	107	2	0	408	702	2,101	63	531	1,237	35	2	56
Fitchburg	459	287	130	38	4	70	108	59	0	0	83	218	1,754	34	1,192	268	33	0	62
Norfolk, Northern	769	497	209	56	7	83	201	77	5	1	289	526	1,440	24	385	781	28	0	58
Brighton	389	68	145	175	1	43	130	37	2	1	525	715	2,438	38	1,101	863	20	4	60
Franklin, Greenfield	154	109	8	34	3	14	26	12	3	0	32	344	839	3	322	237	35	15	34
Worcester, 1st Southern	216	124	64	27	1	35	55	24	1	0	43	452	1,153	15	389	518	27	6	35
Brookline	1,053	668	296	81	8	81	255	61	3	0	452	580	1,335	64	255	938	27	1	98
Bristol, Fourth	312	161	54	26	71	34	47	28	0	0	68	299	932	40	191	395	35	2	76
Plymouth, Second	688	384	144	52	108	59	144	56	1	0	156	487	1,610	10	642	618	67	6	85

Brighton	[illegible]	[illegible]	[illegible]	[illegible]	1	[illegible]	[illegible]	[illegible]	2	1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4	[illegible]
Franklin, Greenfield	154	109	8	34	3	14	26	12	3	0	32	344	839	3	322	237	35	15	34
Worcester, 1st Southern	216	124	64	27	1	35	55	24	1	0	43	452	1,153	15	389	518	27	6	35
Brookline	1,053	668	296	81	8	81	255	61	3	0	452	580	1,335	64	255	938	27	1	98
Bristol, Fourth	312	161	54	26	71	34	47	28	0	0	68	299	932	40	191	395	35	2	76
Plymouth, Second	688	384	144	52	108	59	144	56	1	0	156	487	1,610	10	642	618	67	6	85
Chicopee	234	87	80	67	0	57	74	53	0	0	114	193	815	14	424	174	33	12	45
Worcester, 1st Northern	175	115	50	7	3	32	48	31	1	0	46	396	1,026	52	508	190	37	4	98
Charlestown	281	21	188	61	11	46	144	42	0	0	383	250	3,435	224	1,967	1,000	21	6	171
Middlesex, 1st Southern	515	330	159	24	2	75	141	62	2	2	210	312	846	4	339	150	30	0	44
Essex, Eastern	359	172	13	34	140	30	48	24	3	1	65	193	1,148	36	692	39	15	0	51
Norfolk, Western	295	161	110	21	3	80	107	77	2	0	111	188	668	21	176	266	29	0	128
Middlesex, Central	280	201	50	29	0	24	46	23	2	0	129	281	552	23	216	188	36	2	53
Worcester, 2nd Southern	80	41	26	12	1	10	26	10	0	0	18	134	209	8	55	55	9	8	7
Hampden, Western	133	61	45	17	10	36	34	22	2	0	43	346	528	12	248	160	24	0	56
Berkshire, Northern	105	56	38	9	2	23	38	23	0	0	29	391	573	16	399	73	10	0	39
Marlborough	197	104	71	18	4	30	59	28	0	0	61	241	422	6	169	93	17	9	52
Worcester, 2nd Eastern	121	76	31	9	5	13	27	12	1	0	18	78	247	7	74	88	10	2	43
Newburyport	118	53	48	16	1	29	46	27	0	0	38	274	866	96	527	131	26	0	45
Plymouth, Third	145	102	24	16	3	25	24	15	0	0	69	313	656	14	296	168	49	0	37
Peabody	333	145	112	33	43	73	112	51	2	0	115	138	768	27	538	44	12	1	24
Leominster	137	82	42	13	0	27	41	26	0	0	60	113	745	6	470	91	23	1	51
Worcester, Western	140	103	31	5	1	26	27	11	0	0	40	248	219	4	57	51	8	6	23
Worcester, 3rd Southern	200	93	100	6	1	57	97	57	1	0	40	148	173	8	50	49	3	0	4
Hampden, Eastern	63	26	24	9	4	17	21	15	0	0	19	181	395	9	145	141	31	4	39
Plymouth, Fourth	225	84	28	12	101	20	28	13	0	0	29	639	691	8	232	193	24	0	88
Norfolk, Southern	180	105	55	19	1	22	50	20	0	0	58	138	360	8	162	120	25	3	28
Middlesex, 1st Northern	159	112	39	4	4	22	39	22	1	0	41	77	1,054	32	310	528	44	1	31
Worcester, 1st Eastern	89	43	37	7	2	15	37	15	1	0	22	70	174	2	51	45	8	0	18
Berkshire, Fourth	79	31	33	4	11	11	32	5	0	0	6	114	339	0	104	134	18	0	7
Essex, Second	89	64	19	6	0	11	19	10	0	0	14	95	264	19	179	26	9	0	25
Barnstable, First	306	235	5	10	56	25	54	23	0	0	52	200	712	26	246	141	68	10	31
Barnstable, Second	131	62	29	2	38	22	28	20	0	0	23	128	217	10	80	32	11	0	31
Berkshire, Southern	52	38	13	1	0	7	11	5	0	0	7	126	411	1	139	155	36	4	2
Natick	186	93	77	16	0	38	71	35	4	4	56	99	543	4	97	327	16	0	19
Lee	37	13	20	4	0	1	20	1	0	0	8	85	229	0	82	64	11	1	14
Hampshire, Eastern	26	12	11	3	0	11	11	8	0	0	6	70	178	8	97	31	14	1	6
Franklin, Eastern	16	9	0	2	5	0	0	0	0	0	4	32	84	1	18	21	8	1	1
Essex, Third	66	25	17	2	22	7	17	7	0	0	26	21	255	3	124	65	13	0	10
Winchendon	54	16	7	11	20	3	7	3	0	0	6	82	249	2	123	90	8	2	8
Dukes County	26	15	10	1	0	10	10	10	0	0	17	65	100	5	19	36	6	0	1
Williamstown	14	7	6	1	0	1	6	2	0	0	0	49	101	1	50	12	3	0	7
Nantucket	2	1	0	1	0	0	0	0	0	0	0	7	37	0	5	17	1	2	11
Total	48,242	22,254	16,978	6,603	2,407	6,955	15,165	6,047	149	20	18,538	40,208	125,486	3,527	54,202	38,942	2,677	387	7,063

ADDITIONAL INFORMATION

Total Motor Tort cases removed	6,047
Removed by plaintiff	1,860
Removed by defendant	4,147
Removed by both	40

Neglected Children	1,235
Inquests held	77

the finances of all the operations of the government and suggesting various methods of economy and of possible increased income. That report contained figures showing that the public cost of the district court system had increased from 1925 when the figures were in the black to 1941 when the figures were in the red to the extent of over a million dollars. These figures have a natural bearing on the study of the district courts and their future development.

The Ways and Means Committee in its report (House 1295, p. 46). said:

> "*District Courts.* — Exhibit B will bring out the fact that in 1925 the district courts of the Commonwealth received $49,000 more revenue than expenses. Six counties lost money, but the other eight received enough to more than overcome the loss. The figures for 1936 and 1941 make a decided change in the above picture. There is no county today which receives revenue in excess of expenses. In fact, the total loss of all the counties is well over $1,000,000. The law has been changed since 1925, and today the county receives about 66 per cent of the revenue and the cities and towns the other one third, and the State practically nothing. Whereas in 1925 the cities and towns received about 50 per cent, the State received all but 10 per cent of the remainder, which was apportioned to the counties."

G. L. Chapter 280 § 2, St. 1934 C. and St. 1935 C show the changes in the distribution of receipts. The Exhibit B referred to, showing receipts and expenses was as follows:

EXHIBIT B.

Year.	State.	County.	Cities, etc.	Total.	Expenses.
1925 . . .	$419,788 00	$145,098 00	$898,893 15	$1,556,481 09	$1,506,778 80
1936 . . .	18,732 29	570,408 56	280,597 24	869,738 09	2,066,809 63
1941 . . .	14,378 90	644,479 82	367,181 77	1,025,839 49	2,280,938 56

1925, actual gain	$49,702 29
1936, actual loss	$1,196,271 54
1941, actual loss	$1,255,099 07

In view of these facts the Ways and Means Committee suggested for study an increase in entry fees in the district courts, including an increase from $1.00 to $2.00 for small claims entries, and suggested that all the revenue "be turned over to the county treasurer." They figured the revenue obtained from the 1941 entries at $1.00 and the increases to be obtained by different fees ranging from $2.00 to $5.00 as follows. The 1941 figures include 46,876 small claims entries at $1.00:

$1	$78,741
$2	158,482
$3	236,223
$4	314,964
$5	393,705

We think it would be a mistake to increase that fee for the entry of small claims. The small claims procedure provided for on the

recommendation of the Judicature Commission in 1920 has met a real need of the community as shown by the fact that about 45,000 cases involving not more than $50 are entered in the district courts, and we believe that the purpose of that procedure will be better accomplished in the interest of the public by keeping the entry fee at $1.00. As to entry fees in other cases, some increase may be advisable in view of the increased costs shown in Exhibit B, but we do not think the fee should exceed $3.00 in these courts.

The Administrative Committee

The new administrative committee of the district courts created by St. 1941, Chapter 682, has continued its active work and the circulars issued by this committee during the past year are reprinted in Appendix E of this report to show the nature and reasons for the action of that committee and to keep before the profession and public the continuous story of its activities which have marked the beginning of a new chapter in the history of the district courts. Practitioners will do well to examine Appendix E.

In connection with the matter of expense of district courts we again call attention to the plan proposed in our 16th. Report for Suffolk County under the heading "How Boston Can Save Money."

"How Boston Can Save Money

"The annual court cost in Suffolk County for criminal business is about $1,080,000 of which $600,000 is for the Superior Criminal Court, $480,000 for the nine district courts. Boston pays all, except for Superior Court judicial service and the district attorney's office, paid in the first instance by the state. The details appear in a footnote.*

"The Suffolk district courts received in the last reported year 89,870 criminal cases. There were entered in the Suffolk Superior Court, 1,043 cases on indictment, 3,496 appeals from the district courts. That court disposed of 4,925 cases old and new during the year, but it actually tried only 1,372.

"The great majority of cases in the district courts end there with an acquittal or a plea of guilty and a disposition. The more important cases follow a somewhat regular course, — An arraignment and plea of not guilty, a continuance for trial, and witnesses recognized for re-appearance, as many more continuances as the defendant can get. If convicted, an appeal from sentence (made after an investigation and report by the probation officer), and either a release on bail, or confinement in jail, until the case on appeal comes up in the Superior Court. (Incidentally, the weekly cost per inmate in the Suffolk County jail is $15.69).

* Boston Auditor's Report, 1938.

District Courts.

Central	$300,601.
Roxbury	55,886.
Dorchester	22,670.
W. Roxbury	22,471.
S. Boston	17,176.
E. Boston	15,406.
Chelsea	20,308.
Charlestown	16,402.
Brighton	11,090.
	$482,010.

Superior Court.

Judicial (estimated)	$50,000.
District attorney	66,000.
Criminal clerks office	483,269.
	$599,269.

NOTE

In the central court, the criminal cost is computed. In the other district courts, it is arbitrarily assumed that the criminal business accounts for half the total cost, a clear underestimate.

The basic reason for the right of appeal is the constitutional right to a jury trial. It is available even to a defendant who has been placed on probation in a district court, and after a more or less protracted supervision has had to be sentenced. The figures show, however, that the real motive for appeals is not to determine guilt, but to get a lighter sentence and that is what almost invariably results. The report of the Commissioner of Correction for 1937 shows that in Suffolk County, of 1,899 appellants convicted, 1,575 had pleaded guilty. The entry of an appeal for genuine trial in the Superior Court means a repetition of work, by judges, clerks, court officers, and lay witnesses, and no good reason has yet been given why the public purse should be tapped once for a murderer, but twice for a traffic offender or drunkard. Such needless duplication of work, even if not precisely measurable, must run into substantial figures. More important still is the fact that the district courts, which should be the first line of defense against crime, are for the habitual criminal only an additional opportunity for escape.

"The remedy for this financial waste is to give all defendants one day in court, not two. It has been suggested that an appeal should carry up only the issue of guilt, the case, on conviction, to be remanded to the district court for further action. An objection to this might be that it would put out of business a substantial part of the probation and district attorney's force, perhaps of the superior court clerk's office. On the whole, we incline to adhere to our earlier recommendation, often repeated, that a defendant pleading not guilty in a district court be required there to choose or waive a jury trial, with no right of general appeal as now, and that in the former event he and his case be forthwith transferred to the superior court for all purposes [and otherwise the only appeal would be on questions of law to an appellate division and on the sentence to an appellate division similar to that created for the Superior Court by St. 1943 chapter 558]. A few years' experience with this plan, worth more than any amount of present prediction, will show where saving can be made by the removal of duplicated effort. It is not so important to know where the saving will occur as to be assured that it must occur somewhere.

"Our previous discussions of this matter are in the first report p. 19, with draft act p. 135; second report, p. 65; fifth report, p. 33; seventh report p. 17; eighth report, p. 40; ninth report, p. 34; tenth report, p. 23; eleventh report, p. 44; twelfth report p. 29 and the thirteenth report, p. 21. What was there recommended for a trial in the Boston Municipal Court can readily be made applicable to all the Suffolk Courts.

"Special attention is called to the clauses printed in italics in the latest draft act on pages 32–33 of the 12th. Report, as those clauses meet an objection which was raised to earlier drafts.

"Practically every survey of criminal law administration in Massachusetts has agreed in condemning the present appeal system.*

"With Boston so much in need of the elimination of needless expense the step imposed seems imperative. We have tried to measure the direct cost. There should also be considered the added cost of maintenance in jail, the time of police officers and witnesses spent in court attendance under the present appeal system."

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*See 2nd. Report of the Judicature Commission (House 1205 of 1921), reprinted 6 Mass. Law Quart., Jan., 1921, pp. 91–96; "Criminal Appeals," in 7 Mass. Law Quart. (Aug. 1922) 16; Report of the "Crime" Commission (Senate No. 125 of 1934), reprinted in 19 Mass. Law Quart. (Jan., 1934); Warner & Cabot "Judges and Law Reform," pp. 46–60 under the heading, "The Absurd Appeal System"; Orfield, "Criminal Appeals."

COSTS IN OTHER COURTS

In connection with the tabulated costs in other courts the Ways and Means Committee suggested increased entry fees in the Supreme Judicial, the Superior and the Probate Courts and a jury fee. As already stated, their suggestions are a part of their study of costs in all departments of the government which have been steadily rising. No action was taken on the report but it was referred to the next legislature. The matter is of serious public importance and the bench and bar do not commonly realize the cost of the courts to the public from a business point of view.

The Committee reported in part as follows:

"JUDICIAL DEPARTMENT.

"*Court Fees.*

"In their second report, printed in 1926, and in subsequent reports, the Judicial Council called attention to the fact that there is too much litigation in the courts of the Commonwealth which are most expensive to the public, and suggested that fees for these courts be increased. . . .

"Today, as well as when the Judicial Council suggested additional fees in the courts, the burden of maintaining the courts is placed upon the general taxpayer, and not enough upon the litigants who, by resorting to the courts, derive a special benefit from their existence and maintenance. . . .

"Originally the fees paid to the clerks of courts were the compensation, and the only compensation, which they received for their services. By a gradual change of policy (which culminated in 1888 in an entire change of it) the amount to be paid by litigants for the services rendered in the offices of the clerks of courts became, and has since then remained, a matter in which no one was personally interested. Whether it was for that reason or not, the matter of these fees became and has remained one to which no attention was paid until the Judicial Council took an interest, but the Council's recommendations were defeated by the Legislature.

"Jury fees have been instituted successfully in more than twenty States, varying from $2 in Oregon and Minnesota to $40 for the first day of trial and $24 for each day thereafter in California, and a $60 charge made in some cases in Colorado.

"Massachusetts required a jury fee [of $7] from 1805 to 1836. (St. 1805, C. 63 § 1.) . . .

"A jury of twelve men in 1806 received $15 a day so that $7 paid nearly half the expense of the jury: Today the expense each day for a jury of twelve men who sit in a case is $72, not to speak of the additional jurors in attendance, or the necessary meals or other incidentals to a jury trial.

"Governor Ely, in his message to the legislature in 1933 (Senate, No. 1, 13), recommended increased fees and a jury fee.

"In New York the fees in the Supreme Court, which is the same as our Superior Court, in the five counties within the city of New York run to $37 for all fees connected with a jury trial.

"In the Municipal Court of the city of New York having a general monetary jurisdiction up to $1,000, the charge for a jury is $12 for a jury of twelve and $6 for a jury of six, to be paid by the party requesting. In the local courts of inferior jurisdiction throughout the State the jury fees vary.

"The United States District Court has a fee for civil actions of $15 — $5 for filing the case, $5 if you prevail, and $5 may be returned to you unless the defendant cannot pay for his answer, in which case it will be taken out of the plaintiff. The notice of appeal in the district court is $5.

"For filing the appeal in the Court of Appeals the fee is $50. There is also in the Court of Appeals a fee for supervision of printing, which is 25 cents a page.

"There is no jury fee in the Federal court, but if the jury has a meal during the trial both parties pay $7.35.

"In Connecticut the entry fee in the two principal trial courts in the state is $7. The jury fee, to be paid by the person asking for a jury trial, is $10.

"*Illinois.* — In Cook County, where more than 70 per cent of the litigation of the State of Illinois originates, there is a variety of courts. . . . [In some there is] plaintiff's filing fee, $15 and defendant's or intervenor's appearance fee, $5 and the party desiring a jury must pay a jury fee of $8.

"In the Municipal Court the fees are graded as follows:

Up to $200 filing fee, $2; appearance fee, none
From $200 to $500 filing fee, $5; appearance fee, $2
From $500 to $1,000 filing fee, $7; appearance fee, $3
Over $1,000 filing fee, $10; appearance fee, $5
Jury fees where six jurors are demanded, $6
Jury fees where twelve jurors are demanded, $12"

The Ways and Means Committee then suggests an entry fee of $15.00 for the Supreme Judicial Court, both for original entries and for full bench entries; an entry fee of from $5.00 to $12.00 in the Superior Court and a jury fee of some amount. In this connection they attached the figures of receipts and costs in 1925 from the second report of the Judicial Council, supplemented by the figures for 1931, 1936 and 1941 in Exhibit A as follows:

EXHIBIT A.

Clerks of Courts, Receipts and Expenditures, with Net Cost of these Offices for Civil business.

	1925.	1931.	1936.	1941.
Receipts, writs, copies, etc. . .	$99,417 64	$135,612 20	$87,508 47	$94,579 15
Three quarters of salary, clerk, assistants and clerical assistance . .	149,730 19	170,585 12	187,634 88	188,916 22
Salary of clerks, etc.	217,651 39	287,816 96	318,249 73	330,831 62
Total cost	375,766 53	458,402 08	505,884 61	519,737 84
Net cost	276,348 89	322,789 86	418,376 24	426,242 57

The "breakdown" of these figures for the various counties prepared by D. Joseph Burke, Esq., for the Ways and Means committee is printed in Appendix D of this report.

The report then discusses possible increases in probate court fees, including an entry fee of $10.00 for divorce or annulment cases. Further details may be found in the report which was reprinted in 28 Massachusetts Law Quarterly No. 3 for April, 1943, p. 38.

Comments on the Suggestions of the Ways and Means Committee.

It should be noticed that the report of the Ways and Means Committee, which was the result of a study of state finances made at the request of the legislature, contains merely recommendations for reasonable increases with alternative suggestions for consideration as to what reasonable increases might be in view of the financial problems faced by the Commonwealth which are likely to become more rather than less serious in future.

As stated by the committee, the Judicial Council, in its second report (in 1926), discussed the matter of fees in relation to the cost of the judicial system, traced in some detail the legislative history of court fees and suggested alternative plans for increases to produce a reasonable amount of additional revenue instead of loading so much expense on the taxpayer (pp. 47–59). That report is part of the background of the Ways and Means report. Later discussions by the Council of entry fees and jury fees appear in the 3rd, 4th, 6th, 7th, 8th, and 9th, reports. At several sessions since that time the Judiciary Committee has reported bills for an entry fee of $5.00 or $6.00 in the Superior Court and a jury fee of $10.00 or some reasonable amount, but those bills have been defeated.

Statistical tables are not attractive to most of us, but they sometimes help greatly in understanding in spite of the time-honored jokes about "statisticians." The statistical tables compiled under the supervision of the Council from the annual records of the Superior Court in 1928 and 1929 in the fourth and fifth reports showed the high public cost of jury trials as compared with verdicts and indicated that it might be cheaper for the public if it could pay all the verdicts instead of paying for the process of reaching them. The facts shown helped materially in the movement which resulted in various successful experiments in reducing delay and congestion. In the same way the generally neglected tables in the annual reports of the Council, and especially tables 1 and 2, and 6 to 11 showing annual entries and thousands of cases on the dockets until they are finally disposed of without trial, many of them for lack of prosecution, may be helpful now in considering the suggestions of the Ways and Means Committee.

In the second report the Council pointed out that 9,257 cases were dismissed in the year ending June 30, 1926 for want of prosecution.

> "of which 2,864 were actions at law, 4,935 were suits in equity and 1,458 were libels for divorce. Of course some of these 9,257 cases were settled out of court and the parties to them did not take the trouble to dispose of the cases by proper entries on the record of the case. But 9,257 cases dismissed for want of prosecution means that there was a great deal of litigation which never ought to have been brought even if some of them were real cases settled out of court and finally dis-

missed for want of prosecution because no entry on the record had been made pursuant to the settlement."

The volume of cases pending on the dockets and undisposed of for years, as shown by the tabulated clerk's returns since that time, indicates that the same condition continues at the expense of the public, in spite of some improvement. These tables show about 45,000 cases undisposed of from year to year and about 26,000 new entries annually. This, of course, involves much continuous clerical work at increasing public expense. The tables compiled for the Ways and Means Committee, and already referred to, as to the cost of clerk's offices, emphasize this cost.

Under these circumstances we believe the suggestions of that Committee for reasonable increases are justified and the question arises, "What are reasonable increases?" We think a $15.00 entry fee in the Supreme Judicial Court whether for original entries or for full bench cases seems reasonable. In the Superior Court and Land Court in similar cases an entry fee of $5.00 and a jury fee of $10.00 (with discretion in the court to waive the fee, for cause, to avoid hardship in proper cases) would seem reasonable.

The other suggestions in the Ways and Means report, as to fees in the Probate Court, will be considered in our next Annual Report.

We invite comment and suggestion from the bench and bar on the matter of fees.

TRIAL JUSTICES

We repeat what was said in our 18th Report at page 62 as follows: "In the 16th Report, pp. 10–13, the Council recommended the abolition of the office of Trial Justice—a recommendation also made by Governor Walsh as long ago as 1915 in his inaugrual of that year.

If that step is not taken, we recommend a slight change in the jurisdiction of trial justices. We see no reason why felony cases which may require indictment by a grand jury should be heard before them at all. We believe such cases should be brought to the District Courts where they are likely to be disposed of with less expense and delay.

We submit the following:

DRAFT ACT.

The first sentence of section three of chapter two hundred nineteen of the General Laws is hereby amended to read as follows (changes in italics):

A trial justice may receive complaints and issue warrants and summonses against persons charged with crime *other than felony*, and try criminal cases *thus begun before them* arising within the town where he resides, etc., as in the present section.

Said section is hereby further amended by inserting as a second sentence

therein the words "They shall not receive complaints alleging felony under any section in this chapter."

Section 31 of said chapter is hereby repealed.

Most of the trial justices seldom receive indictable cases but we are informed that in one town there were 14 heard in 1941 in which the defendant was held for the grand jury and the number increased to 24 in 1942.

STATISTICAL COMPILATION OF WORK OF TRIAL JUSTICES

OCTOBER 1, 1942 TO OCTOBER 1, 1943

(AS REPORTED BY THEM TO THE ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS)

Trial Justice at	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases	Operating under Influence	Juvenile cases under 17
Andover	14	0	0	14	0	0
North Andover	8	0	21	2	3	0
Barre	33	0	8	10	3	0
Hardwick	43	0	11	20	2	0
Hopkinton	4	0	4	0	0	0
Hudson	126	3	70	36	0	1
Ludlow	204	4	69	66	0	0
Marblehead	119	0	90	16	3	0
*Nahant	3	0	4	8	1	0
Saugus	57	0	38	7	0	0
	611	7	315	179	12	1

THE ADMINISTRATIVE COMMITTEE ADDS THIS NOTE RELATIVE TO NAHANT:—

*This compilation is not complete. Walter H. Southwick held the office of Trial Justice at Nahant until August 8th. We have been unable to obtain from him the record of the business before him from October 1st, 1942 to that date. While of little value, we inserted the record as given to us by Mayland Lewis who was appointed Trial Justice on August 8th. Owing to the shrinkage in business, the compilation using the figures of last year for Nahant would be most inaccurate.

BIRTH CERTIFICATES

The current need of many persons for birth certificates has disclosed many difficulties of detail in securing them which we believe result in injustice. To remedy this situation we submit the following draft act and invite comment.

DRAFT ACT.

Chapter forty-six of the General Laws as amended by
is hereby further amended by adding to Section thirteen the following:

"A person born in Massachusetts the record of whose birth was never recorded may have the record of his birth established and recorded in the office of the city or town clerk in which city or town he was born in the following manner: He may apply by petition to the Probate Court of the County in which he was born, and

such court shall determine the facts relating to his birth on such evidence as to the court seems sufficient. A certified record of such determination may be filed in the office of the city or town clerk in the city or town in which he was born, and such record shall be accepted by the city or town clerk as the record of his birth."

CONCURRENT STUDIES.

The 15th Report, on page 5, contains a list, for convenient reference, of the various independent investigations of the judicial system during the past few years, and, on pages 106–108, a list of reports of commissions and committees, with other references relating to the development of Massachusetts courts, from 1780 to 1939. Additional reports are listed in the 18th report at page 63". Since that list additional material has appeared as follows:

Report of Special Commission on the Establishment of an Administrative Court (House 1440 of 1943, reprinted in 28 Mass. Law Quarterly No. 3) containing discussion and draft act relative to mandamus and certiorari (cf. St. 1943 c. and page 6 of this report); also recommendation as to filing and publication of administrative regulations.

Report of Ways and Means Committee as to Court Fees (House 1295 of 1943 —the part relating to Judicial Department reprinted in 28 Mass. Law Quart. No. 3) For discussion of the report see pages 29 and 34 of this report.

Report of Special Commission to Study the Criminal Laws of the Commonwealth (House 1462 of 1943) on which various acts of 1943 relative to criminal law were based.

Report of Special Commission to study the Method of Assessing Damages in Actions for Death (Senate 430 of 1943).

Report of Special Commission relative to Abolishing the Defences of Contributory and imputed negligence in Cases of Injury to Children under Seven (Senate 500 of 1943).

The usual summary of the work accomplished by the various courts with statistical tables of details and noticeable facts indicated by the tables will be found in Appendix C.

Respectfully submitted,

FRANK J. DONAHUE, *Chairman*,
NATHAN P. AVERY, *Vice-Chairman*.
JOHN E. FENTON,
JOHN C. LEGGAT,
WILFRED BOLSTER,
FRANK L. RILEY,
FREDERIC J. MULDOON,
ASA S. ALLEN,
SAMUEL P. SEARS.

APPENDIX A

(Senate Doc. 488)

REPORT OF THE JUDICIAL COUNCIL RELATIVE TO SALVAGE OPERATIONS OF TRUSTEES.

(*Referred to on page 7.*)

To the Honorable Members of the Senate and House of Representatives:

By resolve, Chapter 13 of 1943, the Judicial Council was requested to consider the subject matter of Senate Bill No. 405, relating to the salvage operations of trustees, and to report their conclusions with a draft of legislation on the subject on or before May 17, 1943.

The Judicial Council has considered the subject and the bill referred to, and reports as follows:

This bill, originally introduced as Senate Bill No. 230, and subsequently revised into Senate, No. 405, is intended to regulate the procedure in the administration of trusts under wills or other written instruments to avoid complicated situations which may arise and cause unnecessary litigation and uncertainty in dealing with the proceeds of foreclosure of mortgages of real estate, or of real estate acquired by deed in lieu of foreclosure of a mortgage. The problems of apportionment of the proceeds of such property between capital and income have caused serious complications in other States and promise to cause them here unless regulated by statute. Some of the problems arising were explained in an article in the "Bar Bulletin" for July, 1942 (pages 201–203). The apportionment doctrine, recognized in Massachusetts in *Springfield Safe Deposit and Trust Co.* v. *Wade*, 305 Mass. 36, was again discussed in *McKechnie* v. *Springfield*, 311 Mass. 406, decided in April 1942, and the article from the "Bar Bulletin" is devoted to a discussion of the possible results of that doctrine, The need of legislation was there suggested.

The pending bill, Senate, No. 405, is intended to meet the difficulties of administration thus appearing by providing a practical business rule, for the guidance of trustees and courts in apportioning the proceeds of foreclosures in a fair and reasonable method under the varying circumstances which may arise in particular cases.

As stated at the end of the article referred to, the New York Legislature passed an act to regulate the subject in 1940 (chapter 452 of the New York Laws of that year), referred to in the opinion in the McKechnie case at 311 Mass. 412. A note in 49 Harvard Law Review (pp. 805–811) called attention to "confusing" problems leading to the New York statute.

The question of apportionment where the real estate involved has become unproductive, and where part of the proceeds of a foreclosure consists of notes instead of cash, may become a long, drawn-out process under the opinion in the McKechnie case, with a complication of interests continually arising because of the death of beneficiaries and the subdivision of their interest because of other transfers or division of their interest, which may make a final adjustment of the matter difficult without litigation and create a continual problem of an unbusinesslike character with uncertainty and expense which will benefit nobody.

It may be that where notes are taken as part of the proceeds of a foreclosure, the trustee may decide to get rid of them by sale or otherwise to produce cash as soon as possible on the ground that he should not hold them in the trust. On the other

hand, the trustees may decide that, as a business matter, the best interests of the trust will be served by holding the notes.

We think Senate Bill No. 405 as herein revised meets the situation reasonably and fairly by providing that this matter of apportionment shall be determined from time to time by the trustees according to their best judgment of what is fair under the circumstances, and that this method of dealing with it is better than an attempt to lay down hard and fast statutory rules which may not fit the facts in differing cases.

The changes of phraseology which we suggest and which appear in italics in the bill, in the appendix of this Report, will, we think, explain themselves without further comment, and we therefore recommend the passage of the bill as there printed.

Respectfully submitted by

THE JUDICIAL COUNCIL.

As requested by the resolve above referred to, the Judicial Council considered the subject matter of Senate Bill No. 405 relating to salvage operations of trustees, and a meeting of the Council was held for the further consideration of the matter.

In the absence of the chairman, Judge Donahue, owing to court engagements, Mr. Nathan P. Avery of Holyoke, vice chairman of the Council, presided. In addition to the vice chairman, there were present Hon. John E. Fenton, Hon. John C. Leggat, Hon. Wilfred Bolster, Hon. Frank L. Riley, Messrs. Frederick J. Muldoon and Asa S. Allen.

After extended discussion, the foregoing report was adopted and thereafter circulated to all members of the Council, and the secretary was directed to file it on behalf of the Council.

F. W. GRINNELL,
Secretary.

SENATE, NO. 405, AS REVISED AND RECOMMENDED BY THE JUDICIAL COUNCIL SUBSTANTIALLY ADOPTED AS AN ACT RELATING TO SALVAGE OPERATIONS OF TRUSTEES (ST. 1943 C. 389 SEE P. 7 ABOVE)

SECTION 1. Chapter two hundred and three of the General Laws is hereby amended by inserting after section twenty-four, as appearing in the Tercentenary Edition, the four following sections under the caption SALVAGE OPERATIONS OF TRUSTEES:—

Section 24A. Unless otherwise expressly provided by will or other instrument by which a trust is created, upon the sale of real estate acquired by a trustee under a will or other instrument as a result of a foreclosure or a deed in lieu of foreclosure of any mortgage held by the trust, for a consideration consisting in part or in whole of a note *or other obligation* secured by a mortgage thereon or on a part thereof, the cash proceeds of such sale, plus the net cash receipts *of the trust* from the property *since* default, shall be applied in the first instance to the payment of all *reasonable* expenses and charges involved in acquiring, managing, maintaining, caring for and selling the property. Any balance of cash remaining *may in the discretion of the trustee* forthwith be apportioned between income and principal as though such cash constituted the entire proceeds of the sale.

Section 24B. Cash payments, whether of principal or interest, on a note *or other obligation* of the type referred to in sectiont wenty-four A, receiveds ubsequent to the time when such note *or obligation* was accepted as *the, or* part *of the,* consideration shall, if the total net cash receipts referred to in said section twenty-four A were insufficient to pay expenses and charges therein referred to, be first applied in reduction of *such expenses and charges until* cancelled. Subject to such provision, all such receipts, whether of principal or interest, may in the discretion of the trustee be apportioned between capital and income at such times as the trustee deems advisable.

If any apportionment is made under section 24A, all subsequent apportionments between income and principal shall be made in the same ratio, unless subsequent conditions or other circumstances render a different ratio of apportionment more equitable. The trustee, after the expenses referred to in said section have been paid, may treat as income all or any part of the interest received on such note. A trustee who makes, *in good faith, an* apportionment provided for in this section *or* section twenty-four A shall not be charged with personal liability for such acts.

Nothing in this, or the preceding, section shall prevent a trustee from seeking the instruction of the proper court if he deems it advisable. The term "mortgage" as used in *the preceeding* section shall include a mortgage participation or a mortgage certificate or any other form of interest in a single entire mortgage, but shall not include a mortgage participation or a mortgage certificate or any other form of interest in a group of mortgages.

SECTION 2. The various provisions of this act are hereby declared to be severable and if any such provision or its application to any person or circumstance shall be held to be invalid or unconstitutional such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining provisions or application to persons or circumstances other than those as to which it is held invalid.

NOTE

Lines 44 to 58, inclusive, of Senate, No. 405 have been omitted as unnecessary in this revised draft.

APPENDIX B

PROBATE COURT FOR THE COUNTY OF MIDDLESEX NO. 17252

IN THE MATTER OF THE GUARDIANSHIP OF CHARLES WYMAN, AN INSANE PERSON.
REPORT OF HENRY E. WARNER, GUARDIAN AD LITEM. (*Referred to on page 12*)

In the matter of the petition of William Warren Vaughan, as guardian of Charles Wyman, for the confirmation of certain family settlements and for payment of certain annuities, in which I was appointed guardian *ad litem* or next friend for persons not ascertained or not in being who are or may become interested in said case, and have no legal guardian, and

In the matter of the settlement of the second and final accounts of Sarah Wyman Whitman as guardian of said Charles Wyman Whitman as guardian of said Charles Wyman rendered by Henry Parkman, Charles E. Grinnell, and Robert Brent Keyser, executors of the said Sarah W. Whitman's will, in which I was appointed to act as guardian *ad litem* or next friend for said Charles Wyman, I report as follows:

Charles Wyman, the ward, was graduated at Harvard College in the class of 1867, and subsequently entered into business in connection with his uncle, Samuel G. Wyman of Baltimore, and subsequently became a partner with his uncle in said business. His relations with his uncle and with the family and members of the household of his uncle were of the most intimate kind, and continued to be so until he lost his reason and it was necessary to appoint a guardian for him. His sister, Mrs. Sarah W. Whitman, who was his sole next of kin, was appointed his guardian and continued to be so until the time of her death, and the accounts in question relate to her management of the estate as such guardian. The only items in the account as to the correctness of which there appears to be any doubt are certain items relating to payments by way of annuities to three ladies who were members of his uncle's household, and to payments by way of subscriptions to religious or social organizations with which the ward was connected or actively interested while of sound mind. The new guardian has applied for leave to continue the annual payments to said three ladies.

It appears that shortly after the close of the Civil War the three ladies in question were invited by the late Samuel G. Wyman to make their home with him, which they did, and became members of his household, and although not formally adopted as children, were respectively thereafter treated by him and his wife as if they were children, and two of said ladies remained actual inmates of the household until the death of Mr. Wyman, and the third, although not actually living in the household all the time, continued in the same relation until Mr. Wyman's death. Mr. Wyman and his wife treated these ladies as if they were daughters, and after the death of his wife these ladies conducted his household and presided therein as if they were his daughters. Mr. Wyman had repeatedly made known both to these ladies and to his relatives and heirs his intention to make suitable provisions for them upon his death, and it was the accepted understanding of the heirs of Mr. Wyman that this would be done. Upon the death of Mr. Wyman it appeared that he had left a will by which his property was left to his executors in trust. The trusts, however, were not declared in the will, although detached pieces of paper were found with the will which appeared to indicate the use which Mr. Wyman wished to have made of his property and which were so understood, accepted and treated by his executors

and by his heirs, although such provisions were not legally binding as a part of the will, among other provisions, so indicated, provisions for these three ladies in question.

In accordance with the clear intention of Mr. Samuel G. Wyman his heirs undertook to carry out the provisions for these three ladies, and agreed with each of these ladies to pay to her an annuity. Two of these heirs, a brother and sister of Samuel G. Wyman, made provisions in their wills for these ladies, and the other heirs entered into formal agreements in writing, Mrs. Whitman signing as guardian for Charles Wyman, copies of which are hereto attached. At the time these formal agreements were made the brother had died, and the sister did not join these formal agreements because it would have necessitated a change in her will which was inadvisable. She has been and still is paying regularly her proportionate share. One of the said heirs of Samuel G. Wyman was Charles Wyman, this ward, who at that time was insane and under the guardianship of his sister, Mrs. Whitman, as above stated, herself also an heir of Samuel G. Wyman, and Mrs. Whitman, on behalf of herself and as guardian of Charles Wyman, joined in said agreements. Mrs. Whitman, as such guardian, has since made the payments required by said agreement on behalf of the ward, which are the payments above referred to.

At the death of said Samuel G. Wyman, Charles Wyman, as one of the heirs, inherited one-eighth of his estate, said one-eighth amounting to a sum which forms a large part of the ward's estate, and the net income of which is much greater than his share of these annuities.

For many years the ward has been, and now is, confined in Butler Asylum in Rhode Island, and there appears to be no prospect of his recovery. He has been provided with all the comforts, luxuries and advantages possible to one in his condition, but the total expense of his maintenance and support does not consume the income of his property.

The net income of the whole of the ward's property is about $9,000 and the total expenses of his maintenance and support are now about $4,200 a year, soon to be increased by a change of rate at the Butler Hospital to about $5,500 a year, and there is no reason to expect any necessity for any further substantial increase in those expenses. There is, therefore, a surplus income from his estate of about $3,500 a year, and there is already an accumulated surplus income amounting to nearly $46,000 invested and earning part of the income above recited.

It is in connection with these circumstances that the propriety of the payments made by Mrs. Whitman and proposed to be continued by Mr. Vaughan must be considered.

The jurisdiction of the courts having charge of the property of insane persons to permit expenditure other than for the direct comfort and support of the ward himself is well recognized and has been repeatedly exercised.

This jurisdiction has been exercised in Suffolk County in this Commonwealth as appears by the Probate records in case

No. 86103 *Samuel T. Holmes*

where a part of the ward's income was applied to the support of his father.

No. 92491 *W. H. H. Cummings*

where a mother and sister of the ward were helped, and after the mother's death another sister was helped.

No. 110693 *Elizabeth H. Tuttle*

where a sister was helped.

That the jurisdiction is not confined to relatives or persons who might have a legal or *quasi* legal right to support is shown by the case of

Re: Earl of Carysfort, Cr. Craig & Philip's Reports, 76

where an allowance was made for an old servant, and in the case of

Re: Strickland L. R. 6 ch. A. P. 226

where a subscription was made toward building a church and schools in a region where the lunatic's property was situated, and in

Re: Heeny, 2 Barb. Ch. (N. Y.) 326.

where, among other things, the lunatic's bounty was continued to three old ladies whom he had been supporting.

In ex parte Whitbread, 2 Merivale, 99, Lord Eldon said, "If we get to the principle, we find that it is not because the parties are next of kin of the lunatic, or, as such, have any right to an allowance, but because the court will not refuse to do for the benefit of the lunatic, that which it is probable that the lunatic would himself have done;" and in

Re: Earl of Carysfort, above, the allowance was made on the ground that the "allowance was one which the lunatic, if he should ever recover, would approve."

In Re Earl of Sefton L. R. 2 ch. (1898) 378.

Lord Justice Chitty says: "I think we ought not in these cases simply to take the narrow view of what is the pecuniary benefit. We should act for the lunatic as if he was a person of sound mind, and being a person of sound mind, he would be actuated as a reasonable man, with a desire to comply with such conditions as this contained in his father's will."

See also an Article on the surplus income of a lunatic.

8 Harvard Law Review (March 25, 1895)

These cases seem to show that in exercising this jurisdiction the courts have mainly concerned themselves to ascertain whether the payment is one which a reasonable, sane man would be expected to make.

Applying that test to this case it appears that the other heirs of Samuel G. Wyman not only regarded these payments as reasonable, but that they treated their inheritance from their uncle as if it were charged with the obligation to provide for these ladies, and they individually bound themselves and their estates to contribute to these annuities, as is shown by the agreements above referred to. I have learned of no reason to suppose that if Charles Wyman had been sane at the time of his uncle's death he would have had less regard to the wishes of his uncle, or would have less felt the moral obligation attached to his inheritance than did his co-heirs, and indeed his close personal association with his uncle, and with his uucle's household, and with these very ladies as members of said household before his insanity

would lead one to suppose that he would have been among the first to propose some such arrangement as was made.

It is noted that if Samuel G. Wyman himself had become insane, payment to these three ladies would be supported upon the authority of *Re Heeney* above referred to, which makes it easier to recognize the propriety of continuing such payment out of the surplus income of an insane heir.

In regard to the sundry payments made by Mrs. Whitman, as guardian, to various social, charitable, and religious undertakings, they all seem to have been made with a view to treating the insane person as if he were not only a human being, but still retained a relation to society which could, to a certain extent, be recognized in this way. So far as I can learn no question as to the propriety of payments of this character has been made by any parties interested in this case, and they seem to be such as would naturally be approved by the ward if he were to recover, and such as any reasonable person in his position in society and with his history would approve, if sane.

From the foregoing considerations as guardian *ad litem* I approve the account filed by the executors of Mrs. Whitman, and assent to the petition of Mr. Vaughan to be allowed to continue the payment of said annuitants.

s/ HENRY E. WARNER

APPENDIX C

SUMMARY OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

The act creating the Judicial Council (reprinted at the beginning of this report) provides that the Council shall study "the work accomplished and the results produced by the judicial system and its various parts" and "shall report annually upon the work of the various branches."

The annual periods reported by the different courts are not the same, some reporting for the last calendar year while others report from June 30 to June 30, or from September 1 to September 1, etc. The details as to counties appear below.

Supreme Judicial Court.

During the court year September 1, 1941, to August 31, 1942, there were decided by the full bench of the Supreme Judicial Court 303* cases, in 29 of which the rescripts were not accompanied by opinions. The reports of these cases begin at page 493 of 309 Mass. and end at page 154 of 312 Mass.

During the court year September 1, 1942, to August 31, 1943, there were decided by the full bench 322* cases, in 13 of which the rescripts were not accompanied by opinions. The justices also rendered 2 advisory opinions requested by the legislative department under chapter 3, article 2, of the Constitution. Reports of this work of the court appear beginning at page 154 of 312 Mass. and ending at page 484 of 314 Mass., and in the Supplement in 314 Mass.

The table of full-bench cases since 1875 appears on p. 71 of the 15th Report. There is also the usual table of Supreme Court business, other than full-bench cases, with more detailed statements from Suffolk county which appears below.

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES
FOR THE YEAR BEGINNING SEPTEMBER 1, 1942, THROUGH AUGUST 31, 1943
(Not including full bench cases)

	Equity	Transferred to Superior Court	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admission to Bar	Other Proceedings
Barnstable	—	—	—	—	—	—
Berkshire	—	—	—	1	—	1
Bristol	—	1	—	—	—	1
Dukes	—	—	—	—	—	—
Essex	—	—	—	2	—	—
Franklin	—	—	—	—	—	—
Hampden	—	—	—	1	—	1
Hampshire	—	—	—	—	—	—
Middlesex	2	—	1	3	—	—
Nantucket	—	—	—	—	—	—
Norfolk	1	—	—	—	—	—
Plymouth	—	—	—	—	—	—
Worcester	1	—	—	—	—	—

The details of the business in Suffolk County appear on the following page.

* This is the number of opinions filed. In some instances a single opinion covered more than one case.

SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK

REPORT FROM SEPTEMBER 1, 1942 TO SEPTEMBER 1, 1943

Transferred to Superior Court	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admission to the Bar
2	2	17	489

Law Docket

Petitions for Admission to the Bar	489
Petitions for Writs of Error	10
Petitions for Writs of Mandamus	3
Petitions for Writs of Certiorari	2
Petitions for Writs of Habeas Corpus	2
Petitions by Bar Association (Disciplinary Actions)	5
Petitions under G. L. c. 211, s. 3	1
Appeals from decision of Appellate Tax Board	20
Total Entries on Law Docket	532

Equity Docket

Bills of Complaint	10
Informations by Attorney General (for failure to file returns, etc.)	644
Petition for Voluntary Liquidation	1
Petitions for Dissolution	1
Petitions for Dissolution under G. L. c. 155, s. 50A (about 1618 corporations)	3
Petition for Review	1
Petition for Suspension of Decree	2
Petition for Instructions	1
Petition for lease to sell real estate	1
Total Entries on Equity Docket	664
Total Entries on Both Dockets	1,196

THE SUPERIOR COURT.

This court consists of a chief justice and thirty-one associate justices. It has unlimited civil and criminal jurisdiction and holds sessions in all of the fourteen counties. It is the only court sitting with juries. The tabulated returns of the clerks under St. 1936, Chap 31, § 3 for the year ending June 30, 1942, will be found on pp. 55–56.

To have a true picture of the work of the trial sessions one must take into consideration many cases settled during trials and others nonsuited or defaulted. An example is Suffolk County where a case is deemed tried only when a trial results in a verdict or disagreement Over 66 per cent of all civil cases tried are tried in this county.

Motion sessions are held regularly in Suffolk, Middlesex, Worcester, Hampden and Essex Counties, and this fall in Norfolk. In other counties motions are considered at jury-waived sessions. Many questions are considered by the court at these sessions.

The returns do not indicate how many cases were continued indefinitely because of absence of a party in the military or naval services. The effect of the war, however, is shown by the figures in this court as it is in the district courts.

The table of criminal business (p. 55) shows 1,542 cases "tried" and 9,470 "disposed of" in 1185½ days as against 2,371 "tried" and 12,083 "disposed of" in 1,614½ days last year. In this criminal work the use of district court justices was reduced from 584 days last year

to 196 days this year. There were 11,056 indictments and appeals entered last year and 8,807 this year, a reduction of over 26 per cent.

On the civil side there were 17,759 new entries (table 2) of all kinds during the year — a drop of 8,863 from the previous year (obviously the effect of war conditions). The number of cases tried (table 3) was about the same as last year — 3,438 as against 3,455, and the total finally disposed of (most of them, of course, without trial) was 22,960 (table 6) as compared with 27,046 last year. The total remaining undisposed of (June 30, 1943, including cases marked "inactive") was 39,628 (table 8) as compared with 44,830 on June 30, 1942. The court sat for civil business 4,364 days as compared with 4,436 last year.

PRE-TRIAL SESSIONS OF SUPERIOR COURT
FROM JULY 1, 1942 TO JUNE 30, 1943

	Suffolk	Worcester	Hampden	Essex
Number of cases on pre-trial list	7,655	1,452	1,667	602
Number of cases pre-tried	5,098	1,032	1,141	402
Number of cases settled by agreement	1,220	76	129	93
Number of cases nonsuited	192	7	12	5
Number of cases defaulted	115	3	2	4
Number of cases disposed of by nonsuit and default, or discontinued	27	3	15	8
Number of cases referred to auditors	291	1	8	0
Number of cases where jury was waived	241	23	16	6
Number of cases continued	1,003	307	344*	84
Number of cases to trial lists (short lists)	1,665	997	1,141	402
Number of cases from pre-trial lists settled on trial lists (short lists)	1,228	389	422	208
Number of days Court sat for pre-trial	163	24	27	6

* This figure of 344 in Hampden covers "continued" and "added to future pre-trial lists" and "military affidavits."

No pre-trail sessions were held in the other counties this year. Last year such sessions were held in Middlesex and Berkshire but none in Essex (see 18th Report, p. 79).

In Suffolk county the sittings without juries were: Law & Equity Sessions, 424 days; Motion Session, 300 days; Pre-trial Session, 163 days; Total, 887 days.

Sessions of the court (not included in the foregoing totals), with three justices presiding, for hearing election petition matters were held on five days during the year.

REFERENCES TO AUDITORS AND MASTERS IN THE SUPERIOR COURT

Calendar Year 1941 and 1942

County	1941	1942	1941	1942	1941	1942
	Auditors other than for Motor Vehicle Torts		Master		Auditors for Motor Vehicle Torts	
Barnstable	11	7	5	3	–	–
Berkshire	5	11	4	10	1	4
Bristol	17	19	22	24	18	8
Essex	33	13	32	25	80	14
Franklin	2	4	5	2	–	–
Hampden	39	33	20	11	137	68
Hampshire	2	7	3	5	–	–
Middlesex	130	20	73	44	391	107
Norfolk	13	6	20	12	112	45
Plymouth	2	2	8	11	9	6
Suffolk	114	78	165	77	540	405
Worcester	73	91	41	23	56	201
	441	291	398	247	1,344	858

Two or more cases tried together are counted as one reference.

Appointment of Auditors in motor tort cases was discontinued on November 1, 1942.

EXPENDITURES AUDITORS AND MASTERS

CALENDAR YEARS 1940–1942

	1940	1941	1942
Barnstable	$1,349.00	$3,760.00	$2,954.80
Berkshire	1,407.52	872.41	1,656.25
Bristol	12,166.77	10,665.00	5,597.50
Dukes County	—	—	50.00
Essex	20,759.30	18,353.05	6,042.83
Franklin	1,015.00	775.00	372.50
Hampden	15,404.24	10,016.74	6,429.30
Hampshire	1,602.50	507.50	2,140.25
Middlesex	28,940.01	35,590.02	24,870.87
Nantucket	—	—	—
Norfolk	8,078.78	9,657.50	5,636.25
Plymouth	9,360.50	4,086.25	2,850.50
Suffolk	92,243.60	69,464.09	48,574.50
Worcester	13,463.25	13,102.25	15,415.90
	$205,790.47	$176,849.81	$122,590.90

Note: In Suffolk County these figures apply to the Superior Court (civil) only. In other counties to other Courts also.

SUPERIOR COURT
MOTOR VEHICLE TORT CASES REFERRED TO AUDITORS
JANUARY 5, 1942 TO JANUARY 2, 1943
(Prepared from the Clerk's Returns to the Chief Justice)

COUNTY	Motions Allowed	Settled Before Rule	Cases Wherein Rule Issued	Settled After Rule, No Report	Cases Wherein Report Filed	Settled After Report	Disc. or N. S. After Mo. Alld.	Disposed of on Mo. for Jdgt.	Insistence on Jury Trial: By Plff. Only	By Deft. Only	By Both Parties	Tried After Report: Jury	W. J.	Outstanding Before Aud's, Jan. 4, 1941	Pending Jan. 4, 1941 After Reports	Total Cases Disposed After Mo. for Auditor Allowed	Order of Reference Revoked	Auditors Fees
Barnstable	5	–	5	–	1	1	–	–	–	–	–	–	–	4	–	1	–	$57.50
Berkshire	9	–	9	–	7	2	–	3	–	–	–	–	–	2	2	5	–	326.25
Bristol	16	–	16	2	12	6	–	–	–	1	1	–	–	1	6	8	1	715.00
Dukes	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Essex *a*	24	–	24	–	24	10	–	14	–	–	1	–	–	–	–	24	–	448.74
Franklin	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Hampden	288	29	150	39	79	54	–	1	13	5	23	33	–	21*b*	67*c*	215*d*	–	2,171.25
Hampshire	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Middlesex	27	1	256	41	277	232	10	11	25	17	48	25	4	24	213	329	–	5,389.50
Nantucket	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Norfolk	94	–	94	20	48	19	–	–	3	4	18	–	–	4	28	39	21	1,690.00
Plymouth	8	–	12	–	11	7	–	1	2	–	–	–	–	1	3	13*e*	–	786.25*f*
Suffolk	1,251	246	774	70	642	424	6	40	53	14	244	45	4	37	123	855	–	24,099.44
Worcester	381	80	317	46	195	111	–	8	23	2	42	7	–	85	57	252	–	6,665.00
Total	2,103	356	1,657	218	1,296	866	16	78	119	43	377	110	8	179	499	1,741	22*g*	$42,348.93
1941 Tota's	3,195	535	2,421	182	1,750	1,069	56	121	196	84	527	160	7	512	728	2,232	13	$62,243.64

a Covers period January 11, 1942 to January 10, 1943 inclusive.
b Includes 1 case referred prior to 1942.
c Includes 46 cases referred prior to 1942.
d Includes 92 cases referred prior to 1942.
e Includes 5 cases referred prior to 1942.
f Includes $533.75 in cases referred prior to 1942.
g Report under this item received only from counties specified.

It was voted at a meeting of the Justices October 3, 1942 to "discontinue the appointment of auditors in so-called motor tort cases after November 1, 1942."

SUPERIOR COURT LAW ENTRIES.

January–December, 1942.

(Prepared by the Executive Clerk of the Chief Justice)

	Law Entries			Motor Vehicle Tort Removed		
	Total	Original Entries	Removed from District Courts	Total	By Plff.	By Deft.
January	2,147	503	1,644	1,511	629	882
February	2,049	439	1,610	1,442	637	805
March	2,126	542	1,584	1,396	476	920
April	2,172	491	1,681	1,525	581	948
May	1,805	510	1,295	1,141	423	719
June	1,794	405	1,389	1,248	499	749
July	1,595	523	1,072	951	351	600
August	1,429	355	1,074	950	357	593
September	1,371	436	935	813	345	468
October	1,406	464	942	861	344	518
November	1,386	367	1,019	912	398	514
December	1,338	470	868	735	319	417
Total	20,618	5,505	15,113	†13,485	5,359	8,133
1941 total	24,796	6,287	18,509	16,658	8,308	8,350
1940 total	25,313	7,032	18,281	16,313	9,309	7,004

† 7 cases removed by both parties.

JURY CASES ADVANCED FOR TRIAL AND TRIED DURING YEAR ENDING JUNE 30, 1942

	Original Entries	Removed Cases	Total Advanced Cases Tried
Barnstable	1	–	1
Berkshire	1	6	7
Bristol			
Taunton	1	–	1
New Bedford	–	10	10
Fall River	–	5	5
Essex			
Salem	3	10	13
Lawrence	–	–	–
Newburyport	–	–	–
Franklin	–	–	–
Hampden	3	16	19
Hampshire	–	1	1
Middlesex			
Cambridge	17	127	144
Lowell	–	10	10
Norfolk	2	12	14
Plymouth			
Plymouth	–	7	7
Brockton	–	–	–
Suffolk	115	390	505
Worcester			
Worcester	2	16	18
Fitchburg	–	–	–
Total	145	610	755
Last years totals	191	556	747

LAND COURT

This is a court of three judges created in 1898 for the registration of title to land and since then developed by additional extensions of jurisdiction both at law and in equity into the court in which almost all litigation regarding title to land takes place in addition to its original function of a court for the registration of title.

LAND COURT FIGURES FOR 1942

Registration Cases	347
Confirmation Cases	2
Post Registration Cases	571
Tax Lien Cases	1,875
Miscellaneous Cases	118
Equity Cases	1,107
Total cases entered	4,020
Decree plans made	400
Subdivision plans made	422
Total plans made	822
Total appropriation	$120,664.00
Fees sent State Treasurer	52,645.87
Income from Assurance Fund applicable to expenses	8,608.76
Unexpended balance	3,182.58
Net cost to Commonwealth	51,836.58
Assurance Fund Nov. 30, 1940	281,483.79
Assessed value of land on petitions for registration, confirmation	4,021,386.00
CASES DISPOSED OF BY FINAL ORDER DECREE OR JUDGMENT AFTER HEARING	
Land Registration	391
Land Registration—Supplementary	571
Tax Foreclosure	1,667
Equity, Real Actions & Miscellaneous	863
Total cases disposed of	3,492

PROBATE COURTS

There is a probate court in each county with jurisdiction of wills, trusts, settlement of estates, guardianship, adoption, change of name, divorce and separate maintenance and a variety of other matters. There are three judges in Suffolk, two in Middlesex, two in Essex, two in Worcester and one in each of the other counties.

The report prepared by the Administrative Committee of the Probate Courts for the year 1942 appears on page 88.

THE MUNICIPAL COURT OF THE CITY OF BOSTON

This court consists of a chief justice and eight associate justices, all full time judges. There are also six special justices. The tables showing the *details* of the civil business for the year 1942 will be found on pp. 67–68. The comparative table of civil business from 1913 to 1939 will be found in the 15th. Report, p. 65. The condensed civil and criminal business and other information for the year 1942 and the first nine months of 1943 is as follows:

MUNICIPAL COURT OF THE CITY OF BOSTON
CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES)

Year	Entered	Removed	Per Cent	All Defaults	Per Cent of Entries	Tried	Per Cent of Entries	Total Plaintiff's Judgments	Average Plaintiff's Judgment Contract only	Heard, Appellate Division	Per Cent of Trials	To Supreme Judicial Court
1941 .	27,301	4,659	17.0	9,933	36.3	2,555	9.3	$2,405,492.31	$197.19	74	2.8	8
1942 .	23,182	3,292	14.2	7,840	33.8	2,272	9.8	2,355,029.03	186.50	58	2.5	14
1943 9 Mos.	12,872	1,743	13.5	5,141	39.9	1,058	8.2	1,167,906.36	160.56	13	1.2	7

The jurisdictional limits in civil cases from 1866 to 1877 were $300; from 1877 to 1894, $1,000; from 1894 to 1922, $2,000; from 1922 to September 1, 1929, $5,000; since 1929, the jurisdiction has been unlimited in amount.

SUBDIVISION—CONTRACT AND TORT—1942-1943

Year	Entered		Removed				Tried	
	Contract	Tort	Contract	Per Cent of Entries	Tort	Per Cent of Entries	Contract	Tort
1941								
1942	13,069	9,056	215	1.6	3,065	23.45	880	1,174
1943 9 Mos.	7,844	4,475	112	1.4	1,615	20.58	430	507

TORT ENTRIES, REMOVALS AND TRIALS

1942

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	7,423	Motor Vehicle, Piff.	1,991	Motor Vehicle	860
Other Torts	1,633	Motor Vehicle, Deft.	1,023	Other Trots	314
		Other Torts	51		
Total	9,056	Total	3,065	Total	1,174

1943 January 1–September 1

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	3,581	Motor Vehicle, Piff.	1,052	Motor Vehicle	315
Other Torts	894	Motor Vehicle, Deft.	509	Other Torts	192
		Other Torts	24		
Total	4,475	Total	1,615	Total	507

Supplementary Process Entries

1942	2,782
1943, nine months	1,632

Summary Process (Ejectment) Entries

1942	519
1943, nine months	306

SMALL CLAIM DIVISION

	1942			1943 January - Sept. 30		
	Contract	Tort	Total	Contract	Tort	Total
Actions Entered	1,437	295	1,732	854	158	1,012
Actions Settled	77	28	105	43	23	66
Counter-Claims or Set-offs	4	5	9	3	1	4
Trials	345	196	541	137	132	269
Reserved	83	70	153	48	56	104
Finding for Plaintiff	284	147	431	103	97	200
Finding for Defendant	60	48	108	34	35	69
Judgments by Default	807	89	896	418	55	473
Judgments by Non-Suit	18	7	25	9	1	10
Amount of Plaintiff's Judgments	$24,279.77	$2,687.38	$26,967.16	$12,481.65	$1,820.86	$14,302.51
Transferred to Regular Civil Docket	–	5	5	1	2	3
Removed to Superior Court	1	4	5	1	1	2
Executions	496	54	550	309	85	394
Amount of Plaintiff's Claims	$32,643.15	$7,877.88	$40,521.03	$19,700.34	$4,912.96	$24,613.30
Notices Returned Unclaimed	188	16	204	195	15	210

Criminal Business
October 1, 1942 to September 30, 1943

Cases begun	26,897	Traffic cases (including auto violations)	9,679
Discharged, No Pros. filed	6,711	Domestic relations	342
Pleas guilty	19,200	Not arrested, defaults, pending	1,124
Pleas not guilty	2,377	Automobile violations	1,588
Findings not guilty	712	Automobile appeals	81
Held for Grand Jury	398	Traffic violations	8,056
Appeals	953	Traffic appeals	46
Court drunkenness	6,436	Cases reported for inquests	95
Drunks released by probation officer	6,175	Inquests held	2
General cases	4,265	Search warrants	106

Parking Law
(*Chap. 90 Sec. 20A, Chap. 368 of 1934. Revised Chap. 176, Acts of 1935, Amended Chap. 201 of 1938*)
October 1, 1942 to September 30, 1943

Tags issued to police	60,000
Tags turned in (as issued by police to violators)	58,543
Total cash paid in tag office	$18,717

Boston Juvenile Court.

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston. It has one judge and two special justices.

Entries for the Year Ending September 30, 1943

Delinquent	755
Juvenile Criminal	18
Wayward	2
Neglected	97
Adult Criminal	9
Total	881
Active probationers as of Sept. 30, 1943	265

In connection with these figures, it should be remembered that in most cases the boy is placed on probation or otherwise kept under supervision by the court through the probation officer over a long probation period, and that in addition to the "cases" of new complaints entered on the docket and reported in the annual returns to the Department of Correction, the advice and assistance of the judge and probation officers is constantly sought by parents in informal conferences in cases which do not reach the stage of formal complaint by any one.

The Other District Courts.

In addition to the Municipal Court of the City of Boston there are seventy-two other district courts in different parts of the Com-

monwealth. Each has one standing justice and from one to three special justices, the number varying with different courts.

The statistical table showing the business of all these 72 courts, prepared by the Administrative Committee of the District Courts, will be found facing page 28. Practitioners in District Courts should examine Appendix E, pp. 71.

The Department of Industrial Accidents.

Of the 211,937 accident reports filed with the Department during the year 1942, 60,619 were for injuries causing the loss of at least one day or one shift, called in the report of the Department "tabulatable injuries"; of these, 289 cases resulted in death, 30 in permanent total disability, 1,399 in permanent partial disability, and about fifty-five and four-tenths per cent represent a temporary disability of more than one week.

There was paid by various authorized insurance companies as monetary and medical benefits under this Act $10,897,035.86 during the year 1942. The Commonwealth paid monetary and medical benefits to its injured employees during this year in the amount of $101,127.46. The cost to the Commonwealth of administering the law for this year was $219,221.70 made up as follows — Salaries of Members $39,183.94 — Salaries of other employees $160,037.38 — Expenses $13,849.46 and Travel Expenses $6,150.92. The Department received the sum of $229.50 for certified copies of records.

The board is not a court, but an administrative Commission. It was, in part, created to relieve our courts of the congestion of the cases growing out of the relation of master and servant. In addition to its administrative duties, the board and its members hold several thousands of hearings each year to determine questions of fact and law arising under the Workmen's Compensation Act. In addition the members hold several thousand conferences each year to consider agreements for lump sum settlements.

Appellate Tax Board.

The Appellate Tax Board is an administrative tribunal, to which have been transferred some of the functions formerly imposed on the Superior Court. It came into existence under St. 1937, c. 400, on May 29, 1937, succeeding the old Board of Tax Appeals which was abolished.

The annual business of this board and its predecessor from 1931 to 1942 will be found on page 91 of the 18th Report. Owing to the change of the fiscal year from November 30, to June 30 by St. 1941 c. 509 the annual report from 1942 to 1943 covers only seven months and is therefore omitted from this report.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943

Counties	CRIMINAL CASES												
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases entered.	Appeals withdrawn before sitting following Entry.	Appeals withdrawn after next sitting, under St. 1937, c. 311.	Number of actions on bail bonds for recognizance entered.	Number disposed of in previous years brought forward for redisposition.	Indictments waived.	Number disposed of during year.	Number remaining at end of year.	Number tried during year.	Number awaiting trial at end of year.	Number of days during which a Superior Court judge has sat for trials, hearings or dispositions.	Days District Court judges were called in to sit in Superior Court.
Barnstable	45	27	46	4	1	0	4	0	82	35	11	14	5½	4
Berkshire	67	22	55	14	5	1	0	9	66	69	12	62	14	0
Bristol	202	212	324	38	11	0	1	18	448	344	99	89	49	33
Dukes	8	0	5	1	0	0	1	0	2	5	1	5	3	0
Essex	100	218	583	34	30	1	29	144	868	143	135	88	74	25
Franklin	19	13	11	7	1	0	0	4	14	25	1	19	3	0
Hampden	117	103	112	5	10	3	2	21	251	92	23	87	39	0
Hampshire	118	39	29	2	6	0	18	6	94	103	10	26	3	5
Middlesex	336	736	644	53	18	1	75	50	1,445	397	128	397	179	5
Nantucket	0	2	0	0	0	0	0	0	1	0	3	0	3	0
Norfolk	411	296	257	24	23	0	122	30	643	475	118	464	79	32
Plymouth	198	182	164	15	1	0	160	0	496	166	90	23	51	18
Suffolk	252	1,039	3,034	13	47	43	294	6	4,280	451	797	418	387	43
Worcester*	77	336	316	17	22	0	41	95	774	52	114	50	100	31
Total	2,035	3,227	5,580	227	175	49	747	383	9,470	2,357	1,542	1,742	989½	196

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943

MADE BY THE CLERKS OF COURT TO THE JUDICIAL COUNCIL IN COMPLIANCE WITH STS. 1936, C. 3, § 3

COUNTY	CIVIL CASES											
	Table 1 — NUMBER UNDISPOSED OF AT BEGINNING OF YEAR, JULY 1, 1942											
	LAW											
	JURY CASES				NON-JURY				Equity	Divorce and Nullity	Total Jury Cases	Total Non-Jury
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	65	117	36	30	68	0	8	13	38	0	248	89
Berkshire	39	161	32	5	31	1	10	9	119	0	237	51
Bristol	374	1,383	387	29	112	3	39	15	327	0	2,173	169
Dukes	6	0	1	0	3	0	0	0	6	0	7	3
Essex	310	1,528	446	35	83	45	39	18	183	0	2,319	185
Franklin	22	37	14	6	10	1	1	14	37	0	79	26
Hampden	366	1,758	529	107	165	2	27	21	392	1	2,760	215
Hampshire	47	143	30	17	18	0	1	18	54	16	237	37
Middlesex	590	4,874	1,145	110	241	50	92	119	845	1	6,719	502
Nantucket	10	3	0	0	1	0	2	0	0	0	13	3
Norfolk	347	1,342	413	80	92	7	43	49	263	0	2,182	191
Plymouth	144	438	86	11	66	24	10	11	152	1	679	111
Suffolk	1,894	7,134	3,875	164	1,086	642	440	395	3,226	2	13,067	2,563
Worcester	467	2,313	657	65	183	104	77	81	306	0	3,502	445
Totals	4,681	21,231	7,651	659	2,159	879	789	763	5,948	21	34,222	4,590
Combined Totals	34,222				4,590							
	Total undisposed of all kinds, 44,781											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

CIVIL CASES

Table 2 — Number of New Cases Entered During the Year

County	Original Writs				Removals from District Courts								Equity	Divorce and Nullity	All Others
					By Plaintiff				By Defendant						
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others			
Barnstable	52	0	7	28	0	12	0	2	8	27	2	0	7	0	0
Berkshire	31	0	15	9	0	58	0	0	19	28	1	0	88	0	0
Bristol	62	4	69	12	0	106	1	3	59	511	45	9	66	0	0
Dukes	4	9	0	0	0	9	0	0	1	0	0	0	1	0	0
Essex	179	0	185	2	0	170	7	0	107	734	94	0	191	0	62
Franklin	15	0	5	0	0	26	0	0	2	15	0	1	10	0	3
Hampden	122	3	78	71	1	257	0	0	54	495	40	2	104	0	0
Hampshire	7	0	4	0	0	37	0	0	3	52	1	0	6	26	9
Middlesex	257	1	422	78	2	803	14	3	149	1,259	80	7	288	1	0
Nantucket	3	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Norfolk	80	0	123	39	0	190	0	0	54	274	18	2	56	1	0
Plymouth	29	0	18	0	0	63	0	0	21	158	6	2	67	0	7
Suffolk	778	19	1,477	157	4	1,825	35	2	204	1,522	153	33	866	0	0
Worcester	202	0	190	0	1	377	3	2	52	507	46	6	117	0	60
Totals	1,821	36	2,593	396	8	3,933	60	12	733	5,582	486	62	1,868	28	141
Combined Totals	4,846				4,013				6,863				2,037		
Total removals	10,876														
Grand Total Entries	17,759														

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

County	CIVIL CASES											
	Table 3		Number of Trials Cases Tried									
			Jury				Non-Jury				Equity	Divorce and Nullity
	Total Jury Trials	Total Non-Jury Trials	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	27	3	3	15	4	5	2	0	0	1	0	0
Berkshire	42	11	2	28	12	0	3	5	1	2	8	0
Bristol	142	14	13	103	23	3	4	5	3	2	4	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0
Essex	341	59	36	234	67	4	17	11	7	24	30	0
Franklin	18	3	0	13	4	1	1	1	0	1	2	0
Hampden	151	17	12	94	45	0	5	7	4	1	16	1
Hampshire	40	3	0	34	4	2	1	0	0	2	0	19
Middlesex	421	64	34	306	73	8	35	12	13	4	58	1
Nantucket	1	2	1	0	0	0	2	0	0	0	0	0
Norfolk	73	4	8	42	21	2	2	0	2	0	3	0
Plymouth	116	6	10	95	11	0	4	1	1	0	5	0
Suffolk	881	181	92	517	254	18	81	53	27	20	206	0
Worcester	419	34	31	341	43	4	10	17	3	4	12	0
Total	2,672	401	242	1,822	561	47	167	112	61	61	344	21
Total trials	3,438											

* Not including equity and divorce cases. Total including equity and divorce cases without jury.
Bristol — 29 motor torts taken from jury and settled.
11 other torts taken from jury and settled.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

11 other torts taken from jury and settled.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

CIVIL CASES

Table 4

NUMBER OF JURY VERDICTS

County	For Plaintiff																		For Defendant					
	Ordered			Not Ordered			Less than $200			$200 to $500			$500 to $1,000			Over $1,000			Ordered			Not Ordered		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	2	2	0	1	0	0	1	1	0	0	0	0	0	1	0	0	2	0	2	4	0
Berkshire	0	0	0	2	23	4	0	3	0	1	1	2	0	6	2	1	13	0	0	0	1	0	5	7
Bristol	0	0	0	8	52	4	1	4	1	1	12	2	3	17	0	3	19	1	0	2	5	5	27	5
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	0	0	16	178	49	1	35	12	5	36	12	3	23	0	7	21	10	7	2	8	4	63	15
Franklin	0	0	0	0	9	2	0	1	1	0	2	0	0	3	0	0	3	1	0	0	0	0	4	2
Hampden	0	1	4	7	70	27	2	15	6	2	17	12	1	17	3	2	21	10	2	11	3	1	66	9
Hampshire	0	0	0	0	17	3	0	7	0	0	3	2	0	2	1	0	5	0	0	0	0	0	8	1
Middlesex	1	0	10	20	186	39	4	50	11	4	42	7	4	38	4	6	56	17	4	17	11	11	102	19
Nantucket	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	1	7	39	12	1	8	3	2	13	1	1	9	6	3	9	2	1	5	7	1	18	8
Plymouth	0	0	0	4	39	3	1	4	1	1	9	1	0	12	1	2	14	0	1	10	3	2	17	3
Suffolk	6	5	1	48	280	119	10	93	23	11	63	39	9	39	30	24	90	28	19	38	58	19	194	76
Worcester	1	0	0	12	118	8	2	24	2	2	24	3	3	17	3	6	53	0	1	18	6	6	74	12
Totals	8	6	16	127	1,013	270	23	244	60	30	223	81	25	183	50	54	305	69	35	105	102	51	582	157
	Total for Plaintiff 2,787																		Total for Defendant 1,032					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

CIVIL CASES

Table 5 — NUMBER OF NON-JURY FINDINGS

County	Findings for Plaintiff												Findings for Defendant		
	Less than $200			$200 to $500			$500 to $1,000			Over $1,000					
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0
Berkshire	1	1	0	0	1	0	0	2	0	0	1	1	0	0	0
Bristol	1	0	1	0	0	0	0	0	0	2	4	0	1	1	2
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	8	1	1	0	2	1	1	1	0	4	1	2	3	4	3
Franklin	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0
Hampden	0	1	0	0	0	0	0	4	0	1	0	0	1	3	3
Hampshire	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Middlesex	5	1	1	5	0	2	4	0	0	9	12	5	13	5	9
Nantucket	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	0	0	0	1	0	0	0	0	0	0	2	0	1
Plymouth	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Suffolk	11	8	7	16	8	2	8	7	5	16	8	5	30	22	8
Worcester	2	3	0	0	1	0	2	11	0	3	2	3	3	0	0
Totals	30	16	10	21	12	6	18	25	5	35	29	16	55	35	26
Combined Totals	56			39			48			80			116		
	223												116		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

CIVIL CASES

Table 6 — FINALLY DISPOSED OF

County	Jury								Non-Jury								Equity	Div. and Nul.
	On Auditor's Report				Otherwise				On Auditor's Report				Otherwise					
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	1	4	0	0	21	45	15	25	0	0	0	0	33	0	2	6	12	0
Berkshire	1	5	0	0	27	163	21	1	2	0	0	0	12	5	2	2	69	0
Bristol	0	0	2	0	83	606	124	7	0	0	1	0	39	2	10	7	103	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	4	9	0	0	0	0
Essex	3	3	1	0	218	1,230	335	23	2	7	0	0	88	30	28	43	197	0
Franklin	2	0	0	0	10	33	7	1	0	0	0	0	2	0	0	3	7	0
Hampden	6	38	2	5	164	1,146	269	36	0	0	0	0	61	2	10	13	135	0
Hampshire	0	0	0	0	11	122	8	7	0	0	0	0	5	0	1	8	23	8
Middlesex	2	5	0	0	219	2,563	446	42	0	1	0	0	120	22	52	56	329	1
Nantucket	0	0	0	0	4	3	0	0	0	0	0	0	9	0	0	0	0	0
Norfolk	1	0	0	0	122	664	137	13	0	0	0	0	32	0	15	22	97	0
Plymouth	0	0	0	0	50	255	37	6	0	3	0	0	26	10	5	6	64	1
Suffolk	1	10	2	0	866	4,451	1,987	78	3	7	1	1	531	185	175	139	1,041	0
Worcester	19	115	24	0	173	1,227	279	28	3	9	4	0	73	43	29	73	119	0
Totals	36	180	31	5	1,968	12,508	3,665	267	10	27	6	1	1,035	308	329	378	2,196	10
Combined Totals	252				18,408				44				2,050				2,196	10

Total disposed of all kinds—22,960

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

County	CIVIL CASES													
	Table 7 — Cases Triable I. B. at Issue and Awaiting Trial and not Marked Inactive													
	Jury				Non-Jury				Triable but Enjoined				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	48	76	21	17	34	0	5	5	0	0	0	0	6	0
Berkshire	39	68	20	0	15	1	6	6	1	1	0	0	24	0
Bristol	215	1,206	305	14	45	10	27	4	0	0	0	0	32	0
Dukes	1	0	3	0	6	0	0	0	0	0	0	0	7	0
Essex	280	1,123	360	26	55	22	29	18	1	46	3	0	69	0
Franklin	16	38	7	2	8	0	1	4	0	5	0	0	23	0
Hampden	233	1,169	264	91	94	0	3	16	0	1	0	0	244	0
Hampshire	18	80	7	3	9	0	0	9	0	0	0	0	7	18
Middlesex	578	3,815	1,076	53	128	24	64	43	2	253	54	1	193	0
Nantucket	1	0	0	0	1	0	0	0	0	1	1	0	0	0
Norfolk	211	1,000	319	28	57	0	24	35	4	13	0	0	87	1
Plymouth	77	359	44	4	20	7	5	3	0	0	0	0	47	0
Suffolk	936	4,882	2,833	73	419	339	211	129	3	82	8	0	710	1
Worcester	289	1,437	376	42	69	19	22	11	3	52	1	0	65	0
Totals	2,942	15,253	5,635	353	960	422	397	283	14	454	67	1	1,514	20
Combined Totals	24,183				2,062				536				1,514	20

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

County	CIVIL CASES									
	Table 8 — Cases Remaining Undisposed of Including Cases Marked Inactive									
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	75	107	28	24	63	0	8	18	33	0
Berkshire	48	74	28	10	30	1	7	10	138	0
Bristol	376	1,392	349	30	109	9	55	24	290	0
Dukes	1	0	3	0	6	0	0	0	8	0
Essex	295	1,193	374	26	79	28	33	21	184	0
Franklin	24	46	11	6	11	0	2	14	40	0
Hampden	320	1,331	389	122	152	0	11	23	359	1
Hampshire	41	110	26	12	18	0	1	17	37	34
Middlesex	707	4,285	1,289	68	224	34	88	82	845	1
Nantucket	1	0	1	0	7	0	1	0	1	0
Norfolk	323	1,182	371	76	107	3	41	64	230	1
Plymouth	126	403	67	8	62	11	10	10	154	0
Suffolk	1,365	5,865	3,455	99	989	689	433	396	3,109	2
Worcester	416	1,822	566	70	221	85	71	43	304	0
Totals	4,118	17,810	6,957	551	2,078	860	761	722	5,732	39
Combined Totals	29,436				4,421				5,732	39
	Total undisposed of, all kinds—39,628									

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

CIVIL CASES

Table 9 — Cases Marked Inactive in Previous Years

County	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	14	14	6	4	8	0	1	2	8	0
Berkshire	0	0	2	0	7	0	0	5	13	0
Bristol	65	87	42	5	28	0	5	4	82	0
Dukes	2	0	2	0	2	0	0	0	1	0
Essex	0	0	0	0	0	0	0	0	0	0
Franklin	5	3	4	4	3	0	1	2	10	0
Hampden	52	78	64	14	37	0	7	6	65	1
Hampshire	10	15	12	3	7	0	0	1	14	0
Middlesex	49	184	86	4	51	5	20	14	298	1
Nantucket	0	0	1	0	6	0	0	0	0	0
Norfolk	54	105	46	16	26	2	6	5	56	0
Plymouth	29	13	11	4	18	1	3	3	43	0
Suffolk	91	194	147	7	259	208	136	100	802	0
Worcester	27	40	50	5	80	13	22	8	73	0
Totals	398	733	473	66	532	229	201	150	1,465	2
Combined Totals	1,670				1,112				1,465	2

Total of all kinds marked inactive in previous years—4,249

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

County	CIVIL CASES									
	Table 10 — Cases Marked Inactive During the Year									
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	2	16	3	0	5	0	1	2	6	0
Berkshire	1	3	0	0	3	0	2	0	8	0
Bristol	57	51	26	0	18	2	4	3	35	0
Dukes	0	0	0	0	0	0	0	0	0	0
Essex	0	0	0	0	0	0	0	0	0	0
Franklin	3	0	0	0	0	0	0	0	4	0
Hampden	30	78	51	14	21	0	1	1	43	1
Hampshire	5	7	6	6	1	0	1	4	4	0
Middlesex	24	102	38	2	21	4	6	18	102	0
Nantucket	0	0	0	0	0	0	0	0	0	0
Norfolk	42	56	45	32	16	0	5	7	27	0
Plymouth	14	14	10	0	7	0	0	2	16	0
Suffolk	51	94	123	3	132	119	60	49	442	0
Worcester	29	37	44	13	29	14	18	6	51	0
Totals	258	458	346	70	253	139	98	92	738	1
Combined totals	1,132				582				738	1
	Total marked inactive of all kinds—2,453									

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1943—*Continued*

COUNTY	CIVIL CASES										Table 12	
	Table 11 — Inactive Cases Dismissed During Year										Number of Days in which Court Sat	
	Jury				Non-Jury				Equity	Divorce and Nullity	Jury	Non-Jury Including Equity and Motion and Pre-Trial Sessions
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	4	0	4	2	13	0	0	3	7	0	27	4
Berkshire	2	0	1	1	2	0	0	2	7	0	35	15
Bristol	20	29	16	4	8	0	2	1	50	0	167	20
Dukes	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	0	0	0	0	0	0	0	0	0	276	77
Franklin	0	2	1	0	0	0	0	1	3	0	23	7
Hampden	29	49	27	2	20	2	5	7	65	0	177	66
Hampshire	1	9	0	2	2	0	0	2	4	0	35	4
Middlesex	23	38	79	9	20	0	14	4	89	1	453	169
Nantucket	0	0	0	0	0	0	0	0	0	0	2	1
Norfolk	30	26	16	3	12	0	6	5	45	0	130	12
Plymouth	14	9	9	4	8	8	3	2	23	0	86	22
Suffolk	23	30	39	10	134	72	72	60	401	0	1,260	887*
Worcester	12	17	15	5	15	13	12	8	34	0	337	72
Totals	158	209	207	42	234	95	114	95	728	1	3,008	1,356
Combined Totals	616				538				728	1	4,364 days	
	Total dismissed all kinds—1,883											

* In Suffolk the total of 887 days without juries was made up as follows: Law and equity sessions 424; motion session 300; pre-trial session 163. In addition three justices spent three days hearing election petitions.

* In Suffolk the total of 887 days without juries was made up as follows: Law and equity sessions 424; motion session 300; pre-trial session 163. In addition three justices spent three days hearing election petitions.

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, 1942

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Intz. Filed		Marked for		Trial List				Findings		Appellate Division										
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trial Ordered
Contract.....	13,069	215	6,959	204	944	—	—	—	—	889	435	727	174	61	28	12	7	—	30	26	19	4	2	1	—
Tort.....	9,056	3,065	517	4,090	2,074	—	—	—	—	1,174	924	624	526	44	19	7	4	—	19	12	10	—	1	1	—
Contract or Tort.	345	12	32	44	9	—	—	—	—	77	68	—	34	17	7	1	1	—	9	6	6	—	—	—	—
All Others.....	712	—	332	2	54	—	—	—	—	132	15	112	22	1	1	—	—	—	—	1	1	—	—	—	—
Totals	23,182	3,292	7,840	4,340	3,081	11,077	12,769	194	1,269	2,272	1,442	1,463	756	123	55	20	12	—	58	45	36	4	3	2	—

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, 1942

	Appellate Division—Con.						Defendants' Judgments						Neither Party by Agreement	Plaintiffs' Judgments						Executions Issued
	Motions	Cases Consolidated Under Stat. 1935 C. 433	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Reversed	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defendants' Judgments			Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments	
Contract	8	—	20	11	8	1	46	61	113	41	261		254	6,231	393	334	1,519	8,477	$1,580,972.34	$186.50	8,290
Tort	51	105	6	1	3	—	100	85	441	21	647		318	1	165	459	3,621	4,246	773,472.87	182.16	784
Contract or Tort	—	—	2	2	—	—	6	9	25 ¼½½	—	40		14	—	—	—	—	—	—	—	—
All Others	—	—	2	—	—	—	1	14	8	2	25		—	275	103	9	46	433	583.82	—	367
Totals	59	105	30	14	11	1	153	169	587	64	973		586	6,507	661	802	5,186	13,156	$2,355,029.03	$179.00	9,441

APPENDIX D

TABLE OF RECEIPTS AND EXPENDITURES OF CLERKS OF COURT (SUPREME JUDICIAL COURT AND SUPERIOR COURT) FOR CIVIL BUSINESS PREPARED FOR THE JOINT COMMITTEE ON WAYS AND MEANS IN CONNECTION WITH THEIR REPORT IN 1943 (House 1295 referred to on page 33, as the "breakdown" of Exhibit A.)

The first table for 1925 is taken from the 2nd Report of Judicial Council, p. 51.

The other tables giving the figures for 1931, 1936, and 1941 were prepared by D. Joseph Burke, esq., for the Ways and Means Committee.

COST OF OFFICES OF CLERKS OF COURTS IN THE SEVERAL COUNTIES.

*1925 — Receipts and Expenditures for Civil Business with Net Cost of these Offices**

County	Receipts, Writs, Copies, etc.	¾ Salary of Clerk, Asstr. and Clerical Asstr.	Salary of Clerks, etc.	Total Cost	Net Cost
Barnstable	$525.65	$3,202.01	–	$3,202.01	$2,676.36
Berkshire	1,162.65	5,021.90	–	5,021.90	3,859.25
Bristol	3,725.12	10,957.65	–	10,957.65	7,232.53
Dukes	119.50	1,125.00	–	1,125.00	1,005.50
Essex	8,098.05	28,491.24	–	28,491.24	20,393.19
Franklin	1,015.50	3,750.00	–	3,750.00	2,734.50
Hampden	8,078.07	15,837.49	–	15,837.49	7,759.42
Hampshire	841.40	4,202.25	–	4,202.25	3,360.85
Middlesex	14,536.02	35,679.26	–	35,679.26	21,143.24
Nantucket	116.25	1,125.00	–	1,125.00	1,008.75
Norfolk	3,585.10	9,828.35	–	9,828.35	6,243.25
Plymouth	2,412.57	7,605.00	–	7,605.00	5,192.43
Suffolk Supreme Judicial	4,486.10	–	$32,285.11	32,285.11	27,799.01
Suffolk Superior Civil	40,732.65	–	185,366.28	185,366.28	144,633.63
Worcester	8,749.01	22,905.04	–	22,905.04	14,156.03
	$98,183.64	$149,730.19	$217,651.39	$367,381.58	$269,197.94
Supreme Judicial Court for the Commonwealth	1,234.00	–	–	8,384.95	7,150.95
Totals	$99,417.64	$149,730.19	$217,651.39	$375,766.53	$276,348.89

* The figures in this table with the exception of those for the Supreme Judicial Court for the Commonwealth have been given to the Council by Mr. Waddell, the Director of Accounts of County Finances. Those for the Supreme Judicial Court for the Commonwealth have been given us by the clerk of that court. The figures given do not include stationery, files, books and general office supplies (including printing) but they do include the services of clerks sitting in court during the trial of cases. The salaries of the clerks, assistant clerks and the sums paid for clerical assistance are paid as a lump sum for services in civil and criminal cases. We have been told on inquiry that so far as that can be estimated three-quarters of this lump sum can be taken to have been incurred for services on the civil side of the court.

1931

County	Receipts, Writs, Copies, etc.	¾ Salary of Clerk, Asstr. and Clerical Asst-.	Salary of Clerks, etc.	Total Cost	Net Cost
Barnstable	$900.15	$3,499.74	–	$3,499.74	$2,599.59
Berkshire	1,614.80	9,300.00	–	9,300.00	7,685.20
Bristol	4,135.45	11,516.00	–	11,516.00	7,380.55
Dukes	98.85	609.00	–	609.00	511.15
Essex	10,883.70	25,682.31	–	25,682.31	14,798.61
Franklin	860.05	2,250.00	–	2,250.00	1,389.95
Hampden	9,028.25	21,660.00	–	21,660.00	12,631.75
Hampshire	1,012.65	5,511.00	–	5,511.00	4,498.35
Middlesex	21,350.25	40,164.09	–	40,164.09	18,813.84
Nantucket	113.05	1,200.00	–	1,200.00	1,086.95
Norfolk	5,687.35	13,132.92	–	13,132.92	7,444.57
Plymouth	2,956.27	9,400.26	–	9,400.26	6,443.99
Suffolk Supreme Judicial	1,458.33	–	$47,580.00	47,580.00	46,121.65
Suffolk Superior Civil	63,679.90	–	204,696.96	204,696.96	141,017.96
Worcester	10,629.15	26,659.80	–	26,659.80	16,030.65
	$134,408.20	$170,585.12	$252,276.96	$458,402.08	$288,453.86
Supreme Judicial Court for the Commonwealth	1,204.00	–	35,540.00	35,540.00	34,336.00
Total	$135,612.20	$170,585.12	$287,816.96	$493,942.08	$322,789.86

1936

County	Receipts, Writs, Copies, etc.	¾ Salary of Clerk, Assts. and Clerical Assts.	Salary of Clerks, etc.	Total Cost	Net Cost
Barnstable	$675.45	$7,265.00	–	$7,265.00	$6,589.55
Berkshire	1,595.70	7,020.00	–	7,020.00	5,424.30
Bristol	3,417.68	13,938.00	–	13,938.00	10,520.32
Dukes	92.10	1,275.00	–	1,275.00	1,182.90
Essex	7,269.03	35,482.00	–	35,482.00	28,212.97
Franklin	668.25	5,740.00	–	5,740.00	5,071.75
Hampden	7,788.35	16,633.98	–	16,633.98	8,845.63
Hampshire	815.90	12,732.90	–	12,732.90	11,917.00
Middlesex	13,927.15	38,970.00	–	38,970.00	25,042.85
Nantucket	86.85	1,025.00	–	1,025.00	938.15
Norfolk	4,367.55	10,698.00	–	10,698.00	6,330.45
Plymouth	1,897.21	10,275.00	–	10,275.00	8,377.79
Suffolk Supreme Judicial	1,339.75	–	$50,735.00	50,735.00	49,395.25
Suffolk Superior Civil	32,989.90	–	231,174.73	231,174.73	198,184.83
Worcester	9,602.10	26,580.00	–	26,580.00	16,978.00
	$86,532.97	$187,634.88	$281,909.73	$469,544.61	$383,011.74
Supreme Judicial Court for the Commonwealth	975.00	–	36,340.00	36,340.00	35,364.50
Totals	$87,508.47	$187,634.88	$318,249.73	$505,884.61	$418,376.24

1941

County	Receipts, Writs, Copies, etc.	¾ Salary of Clerk, Assts. and Clerical Assts.	Salary of Clerks, etc.	Total Cost	Net Cost
Barnstable	$731.98	$4,614.00	–	$4,614.00	$3,882.02
Berkshire	1,732.40	6,570.00	–	6,570.00	4,837.60
Bristol	4,749.13	14,757.00	–	14,757.00	10,007.87
Dukes	55.35	1,500.00	–	1,500.00	1,444.65
Essex	8,695.28	19,554.00	–	19,554.00	10,858.72
Franklin	431.00	4,848.00	–	4,848.00	4,417.00
Hampden	7,145.45	18,466.00	–	18,466.00	11,320.55
Hampshire	863.90	6,291.00	–	6,291.00	5,427.10
Middlesex	17,186.65	60,818.00	–	60,818.00	43,631.35
Nantucket	64.45	–	–	–	–
Norfolk	4,359.80	15,030.00	–	15,030.00	10,670.00
Plymouth	1,745.10	9,165.00	–	9,165.00	8,419.90
Suffolk Supreme Judicial	823.80	–	$50,490.57	50,490.57	49,676.20
Suffolk Superior Civil	37,081.90	–	240,751.05	240,751.05	203,669.15
Worcester	8,065.06	27,303.22	–	27,303.22	19,238.16
	$93,731.15	$188,916.22	$291,241.62	$480,157.84	$387,500.57
Supreme Judicial Court for the Commonwealth	848.00	–	39,590.00	39,590.00	38,742.00
Total	$94,579.15	$188,916.22	$330,831.62	$519,737.84	$426,242.57

APPENDIX E

BULLETINS, REQUIREMENTS, AND CIRCULAR LETTERS OF THE ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

(Referred to on Pages 30 and 54)

COMMONWEALTH OF MASSACHUSETTS

Administrative Committee of the District Courts

[Circular of] January 21, 1943

TO THE JUSTICES, CLERKS AND PROBATION OFFICERS OF THE DISTRICT COURTS:

We are sending herewith on separate sheet the statistical compilation of the work of the District Courts for the year ending September 30, 1942. A five-year comparison is as follows:

[Here followed information contained in the 18th. Report of the Judicial Council]

We are happy to report that as of September 30, 1942, there were but three civil cases in which decisions had been delayed for a period of more than sixty days. This is certainly an enviable record and undoubtedly is in large part due to the effective measures which have been taken to bring about prompt decisions. The three cases are found in two courts. In both of these courts the clerk neglected to report the delayed decision to the Chairman of this committee as called for in the Requirement issued by the Committee.

STATISTICAL COMPILATION OF WORK OF TRIAL JUSTICES

October 1, 1941 to October 1, 1942

[This appeared also in the 18th. Report of the Judicial Council.]

Our last circular letter dealing with general matters of interest was dated January 21, 1942.

Under date of January 28, 1942, we issued our Bulletin No. I. We deem it advisable to refer to the various Requirements in that Bulletin as well as those which followed for the purpose of refreshing the memories of the officials of the courts.

The first Requirement was with respect to the keeping of a daily record of the sittings of each court and of all sittings by Special Justices whether simultaneous or not upon printed or typed cards to be filed in chronological order.

So far as we have any knowledge this Requirement has been met by all the judges except in one court. In accordance with the requirement of the statute creating this Committee, we have reported the failure of the judge in that court to the Chief Justice of the Supreme Judicial Court. That these cards were not merely a nuisance has been proved by the fact that Joint Judiciary sitting as a commission asked the clerks to furnish to it copies or compilations of the records thus made.

The second Requirement had to do with delayed decisions in civil cases. Thereby clerks were placed under the necessity of reporting to the judge of each court on the 45th day after the completion of the trial or hearings every case where a decision had not been then rendered and to the Chairman of this Committee on the 60th day after such completion. As indicated in another part of this letter, two clerks failed to conform to this Requirement.

Our Bulletin No. II dealt almost exclusively with the permissible number of simultaneous sessions and the assignment of Special Justices to each court.

Bulletin No. III dealt with Executive Order No. 8 regulating the speed of automobiles and certain procedure and the form of complaint was therein recommended.

Bulletin No. IV under date of May 25, 1942 contained Requirement No. III setting forth the number of simultaneous sessions which might be held in each of the District Courts coming within the terms of Chapter 682 of the Acts of 1941. As of this writing but one change has been made and that because of special conditions.

Requirement No. IV assigned Special Justices for service in each of the courts. With respect to this Requirement, it should be said that it was expected by the Committee changes would be required to meet conditions. All things considered, it is rather remarkable that so few changes have had to be made.

Requirements Nos. V to X inclusive in said Bulletin were as follows:

[These and No. XI will be found in the 18th. Report of the Judicial Council, pp. 72–74.]

Requirement No. XII was issued to a limited number of courts and dealt with supplementary assignments of Special Justices in six courts alone.

Requirement No. XIIA established the forms for use in juvenile sessions.

Practice by District Court Officials in these Courts in Motor Tort Actions

In Bulletin No. 4 under date of May 25, 1942, Requirement No. IV, effective January 1, 1943, was promulgated. This Requirement read as follows:

> "On and after the effective date hereof, no Special Justice shall be assigned to hear or try a motor tort case if he shall be directly or indirectly retained, employed or practise as an attorney in motor tort cases."

The Committee has given much study to the criticism often voiced with respect to practice in the motor tort field by Judges, Special Justices, Clerks and other officials of the District Courts. In the report of the Committee on the Judiciary of the General Court sitting for the study of the District Court system, it is said:

> "With due deference to the Administrative Committee, we suggest that for obvious reasons this Requirement" (the one just hereinbefore set forth) "should be so amended as to apply to Standing Justices as well as to Special Justices."

For practical reasons it does not seem to the committee that it can extend the Requirement at the present time as suggested but it does feel that further regulation is necessary which will in effect prevent practice in the motor tort field by all the officials of the District Courts in those courts. Obviously the Committee would have no authority to regulate practice by those officials in any other court. Further control of the trial of motor tort actions by Judges as distinguished from Special Justices seems to require either rule or legislative act. To bring about the further regulation above referred to, the following Requirement is hereby promulgated:

Requirement No. XIII

(Effective July 1, 1943)

No Judge, Special Justice, Clerk or other official of a District Court shall be recognized as the attorney for the plaintiff or defendant in a motor tort case entered in any District Court.

If any official of said courts shall be a member of a firm, his name shall not appear as such attorney and as a member of the firm.

This Requirement shall not be construed as forbidding the appearance of the other members of the firm in their individual capacities.

Supplementary Requirement with Reference to the Service of Special Justices

After further study, it is the judgment of our Committee that a further Requirement with reference to the assignment and service of Special Justices is necessary. Therefore pursuant to the provisions of Chapter 682 of the Acts of 1942, the following Requirement is hereby promulgated effective as of the date hereinafter set forth:

Requirement No. XIV

(Effective February 1, 1943)

If a Special Justice called to sit in any court to which he has been assigned shall without satisfactory excuse refuse to serve, such refusal shall forthwith be reported by the Justice calling him for service to the Chairman of this Committee.

Requirement with Reference to the Commitment of Delinquents or Neglected Children

Conditions as to hours and days have so affected the Department of Public Welfare that it cannot receive children committed to its care on Saturdays. Commitments on other days should be made as early as possible that the children may arrive at the State House not later than mid-afternoon.

The provisions of law requiring notice by the courts to the Department of Public Welfare are found in G. L. Ch. 119, sections 42 and 58. The first has to do with neglected children and the second with delinquents. A notice to the department in neglect cases is mandatory and as the department has a right to be heard, an agent must be present. In delinquent cases, although notice to the department is discretionary, custom has established a practice of attendance. This was helpful to the court before the probation system was well established. In minor cases where commitment is not considered, the presence of the State Visitor is not necessary and deprives him of time which could be spent to advantage in the visitation of the boys under his care. But, if the court feels in any case that the presence of a Visitor is advisable, the department may be so notified and a Visitor shall attend. Pursuant to the provisions of Chapter 682 of the Acts of 1941, to meet these situations, the following Requirement is hereby promulgated:

Requirement No. XV

(Effective February 1, 1943)

Cases of neglected children shall be considered on some week day other than Saturdays. No child adjudicated a neglected child and no delinquent shall be committed to the Department of Public Welfare under the provisions of G. L. Ch. 119, sections 42 and 58 on Saturdays except with the approval of the Department and made necessary by emergencies.

Notices to the Department under the provisions of said sections shall so far as is practicable indicate whether the cases to be considered are likely to result in commitments to the Department.

Standardized Dockets and Forms

A committee of clerks representing their association has at our request studied the dockets now in use in criminal cases, the cards which constitute the dockets in small claims cases and the notices issued to the defendants in such. They have recommended standardized forms which we have adopted. They have also prepared a general form of complaint and appropriate phrasing for a number of offenses. These likewise we have adopted. We appreciate the interest and assistance of this committee. To make their recommendations effective, the following Requirement is hereby promulgated:

Requirement No. XVI

(Effective January 1, 1944 as to dockets

Effective July 1, 1943 as to notices to defendants and complaints)

Below will be found a standardized form for a docket to be kept in criminal cases, standardized form for the cards which are dockets in small claims cases and form of notice to the defendant in such cases as well as a form for a general complaint and the phraseology for certain offenses. They are hereby prescribed for use as of the effective dates above set forth. All dockets bound or loose leaf, cards, notices and complaints now in use by any Court may be so used until the supply is exhausted. All further printing shall be in accordance with the forms hereinafter set forth:

Criminal Docket

[Details omitted]

Form for Docket in Small Claims Cases

[Details omitted]

Form of Notice to Defendant in Small Claims Cases

Commonwealth of Massachusetts

.....ss.

.....

(Name of Court)
For Civil Business

No.....

To .....

.....asks judgment in this Court against you for $.....and costs upon the following claim:

The Court will give a HEARING upon this claim at the.....,
at.....o'clock in the forenoon, on..... .....19 .
If you deny the claim, in whole or in part, you must, not later than.....19 personally or by attorney state to the Clerk orally or in writing, your full and specific

DEFENCE to said claim, and you must also appear at the hearing. Unless you do both, judgment may be entered against you by default. If your defence is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. The Clerk, if requested, will issue summonses for witnesses without fee.

If you admit the claim, but desire TIME TO PAY, you must, not later than the day set for notice of defence, personally or by attorney state to the Clerk, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reason for desiring time to pay.

Take notice also that if you are found indebted, upon hearing or default, the court may order payment at a time stated or by instalments, and that failure to comply with such order may be treated as a contempt and subject you to punishment.

Witness,.....Esquire, at.....aforesaid, the .....day of.....in the year of our Lord one thousand nine hundred and

.....

Clerk.

The prescribed form of a general complaint follows. For convenience sake, this form is printed as it will be prescribed for the use of the Municipal Court of the Charlestown District. Each court will make the necessary changes to adjust the form for its use.

[Details omitted]

Forms to be Used in Describing Offenses Alleged

[Details omitted]

Juvenile Delinquency

There has been much discussion of juvenile delinquency on the part of speakers and the press with fears expressed if not prophesies made that we would see a great increase in such. While the statistical information at hand and the experience of most of the judges do not bear out such statements or fears, nevertheless it is entirely possible that due to all the unsettled conditions we may find increasing delinquency. We think it entirely proper under the circumstances to suggest to the courts that they give very careful consideration to this matter using all authority which is available in proper cases to prevent as well as cure such delinquency. There would seem to be an opportunity for further extension of the practice found in the majority of our District Courts as well as in the specialized Children's Courts of non-court activities. By "non-court" we mean of course matters which are disposed of without formal complaint.

Judicial Council Report

For the first time in many years the "Problem of the District Courts" is not discussed in the current report of the Judicial Council. The only matters in which our courts are specially interested are recommendations: [certain ones referred to.]

Proposed Standardization of Entries to be Made in Criminal Cases

For some time the attention of the Administrative Committee has been called by the Division of Accounts to the lack of uniformity in the entries made in criminal

cases and to the further fact that this department is obliged to carry in its files a large number of cases with fines involved in which the books and docket records show default and non-payment—others where only partial payments have been made. These fines have to be re-checked in the course of each subsequent examination and for the most part the records show no further action. In a number of courts also it is the practice of the judges in suspending a fine to make a record that "Fine not to be paid if probation terms are lived up to" or words to that effect. There the record stops and the case is not finally disposed of. A number of other entries are made which do not show a final closing of the cases and prevent the examiners from closing their own records.

This matter was, we understand, considered by the former committee and has been the subject of study by us. There has been some question in our minds as to whether these proposed entries should be the subject matter of a requirement or of a recommendation. We have finally determined upon the latter. And we trust that the courts will adopt our suggestions without the necessity of our promulgating a requirement.

Sufficient copies of this recommendation are being sent so that there may be one for each judge and for the use by the clerks and probation officers. We suggest that there be a copy always kept upon the judge's bench and the clerk's desk so that they may be readily referred to.

The following shall be the only proper entries to be made in criminal cases within the scope of this recommendation. They shall be noted on the complaints and in the dockets. Appropriate abbreviations may be used but such procedure should not be adopted beyond what is rendered reasonable by space limitations. (Explanatory notes are appended.)

ENTRIES TO BE MADE IN CRIMINAL CASES:

PLEAS

(*a*) Guilty
(*b*) Not Guilty
(*c*) Nolo Contendere by consent of Court

(Note No. 1. There is a variance in the practice by the different courts as to the plea of nolo contendere. Some judges permit this plea in proper cases; others allow it only infrequently.)

The effect of such a plea as to a record of "conviction" and in cases where different penalties are provided by statute for subsequent offences should be kept clearly in mind.

While waiving of the reading of an indictment is permitted in the Superior Court, we think similar procedure as to complaints in the District Courts should not be encouraged. A defendant should know exactly what offence he is charged with. Similarly we do not believe pleas by counsel rather than by defendants should be encouraged. The plea should represent the admission or denial of the defendant and not that of his counsel. This same comment holds true as to appeals.

CONTINUANCES

(*a*) Case continued to.....(a day certain)
(*b*) Case continued for.....(a definite period of time)
(Note No. 2: No case shall be continued "generally" or "from day to day.")

FINDINGS

(a) Guilty
(b) Not Guilty—Discharged
(c) Dismissed
(d) Probable cause
(e) Held for Superior Court
(f) Surety.....dollars
(g) Personal recognizance
(h) Defendant notified of right to waive indictment.

(Note No. 3: The appropriate entry to be made on a complaint alleging an offence which is not within the jurisdiction of the Court and where the evidence does not justify binding the defendant over to the Superior Court is "Discharged." (See *Commonwealth* v. *Hart*, 149 Mass. 7 at 9.) Such an entry is not a bar to an indictment for the same offence. (*Commonwealth* v. *Roby* 12 Pick. 486 at 501; *Commonwealth* v. *Peters* 12 Met. 387; *Commonwealth* v. *Hamilton* 129 Mass. 479.)

The entry "Dismissed" is not appropriate after a case has been tried upon the facts, but may be if a defendant has been indicted or with the consent of the defendant if the complainant requests it and the case has not been heard on the facts. (*Marks* v. *Wentworth* 199 Mass. 44.)

PENALTIES

(a) Fine $.....
(b) Sentence to .....

APPEALS

(a) Appeal claimed
(b) Surety on appeal $.....
(c) Personal recognizance.

(Note No. 4: All appeals shall be personally claimed by defendants unless the Court shall otherwise permit.)

SUBSEQUENT ENTRIES

(1) Fine paid
(2) Mittimus issued
(3) The Court finds defendant
  (a) Unable to pay
  (b) Will probably default
  (c) Suspension of sentence will be detrimental to public interest.
(4) Probation for.....(a definite period of time)
  or to.....(a definite date)
(5) Probation for.....(a definite period of time)
  or to.....(a definite date)
  Execution of sentence suspended to.....(a date certain)
  or for.....(a definite period of time)

In a probation case where a fine has been imposed and suspended, we strongly advise against any order, recommendation or notation to the effect that "Fine not to be paid if probation terms are complied with" or words of similar import.

(6) Fine paid. Probation order revoked.

(7) Probation and suspension orders revoked. Sentence ordered executed.

(8) Probation order revoked. Fine ordered paid.

(9) Probation and suspension orders revoked. Fine ordered paid.

(10) Probation period having expired, any order is vacated and case filed.

(11) Probation period having expired, any sentence or order is vacated and case filed.

(12) Defendant having withdrawn appeal, the sentence is hereby ordered executed (or affirmed).

(13) Fine remitted to $..... .....
Justice.

(14) All special probation terms shall be endorsed upon the complaint by the Justice or noted thereon by his direction and signed by him.

(15) Every defendant who is placed on probation or whose sentence is suspended shall appear before the Court upon the expiration date of such an order unless excused by the Court.

(16) Upon the expiration of six months after the issuance of a capias which has not been returned, the clerk shall make the entry on the docket "Filed until located." The capias shall then be ordered returned to the Court.

(17) Wherever a defendant has defaulted and is later brought before the Court on another charge, the Court shall order the default removed and take appropriate steps to close the record.

(Note No. 5: (*a*) Whenever a defendant is found guilty and the Court imposes a fine not in excess of fifteen dollars, the Court shall act under the provisions of chap. 279, sec. 1. If the finding is that the defendant is unable to pay but the Court feels the fine should be paid forthwith, the complaint and docket shall have endorsed or stamped thereon as follows:

"The Court finds

(1) Unable to pay

(2) Will probably default

(3) Suspension of sentence will be detrimental to public interests."

Thereafter the entry shall be on both complaint and docket "Fine paid" or "Mittimus issued," as the case may be.

(*b*) Whenever a defendant is found guilty and the Court imposes a fine not in excess of fifteen dollars and the Court decides the defendant should receive the benefit of the statutory leniency under said provisions, the entry on both complaint and docket shall be:

"Sentence suspended to.....(a day certain) and if the Court so decides 'Probation for.....(a definite period of time)' " or to..... a definite date.

(*c*) Whenever a defendant is found guilty and the Court decides a fine not in excess of fifteen dollars should be imposed, the case may be continued to enable the defendant to secure the amount thereof and he may be informed of such amount and the case continued to a day certain. Upon that date the fine shall be imposed and

the entry on both complaint and docket shall read "Fine paid" or "Mittimus issued," as the case may be.

(*d*) Whenever a defendant is found guilty and the Court decides that a fine in excess of fifteen dollars should be imposed but the case should be continued to enable the defendant to secure the amount thereof, he may be informed of the amount and the case shall be continued to a day certain. Upon that date the fine shall be imposed and the entry on both complaint and docket shall read "Fine paid" or "Mittimus issued" as the case may be.

(*e*) If in any case of probation and/or suspension of a sentence to pay a fine, the Court does not require the fine to be paid, the entries on both complaint and docket shall on the expiration date be "Probation period having expired, any sentence or order is vacated, fine remitted and case filed."

(*f*) Whenever a defendant is found guilty and the Court imposes a sentence to a penal insitution but places the defendant on probation and suspends the execution of the sentence, the probation and suspension shall be for a definite period of time. Upon the expiration of such period, the defendant shall be required to appear in court unless excused and the case shall be closed by the entry on both complaint and docket of the following:

"Probation period having expired, any sentence or order is vacated and case filed or 'Case dismissed.' "

(*g*) In all cases of surrender by a probation officer, the complaint and docket shall be endorsed "probation and suspension orders revoked. Sentence ordered executed" or "Probation and suspension orders vacated. Fine ordered paid."

(*h*) In all cases of remittance of fine, the complaint shall be personally endorsed by the judge "Fine remitted to .....dollars.....Justice."

A Word of Caution to the Clerks

It is provided in G. L. ch. 279, sec. 37 that the statutory name, if any, of the crime of which a person has been convicted shall be stated in the mittimus and "shall contain a citation of the statute, if any, under which the complaint was drawn."

We are advised by the Department of Correction that this section has not been strictly complied with in the past. It is most important that the offense be named and the statute cited in the case of a commitment to the Reformatory for Women for this is the only way the officials of that institution can determine whether or not the crime was a misdemeanor or a felony and whether the person should serve two or five years indeterminate.

We urge the clerks to be careful in preparing the mittimuses.

Visits to Courts

It has been the intention of the Committee to visit all of the District Courts. Pursuant to this plan, some of them in the western part of the state and in Plymouth and Bristol Counties have already been so visited. Travel conditions and other factors have made it very difficult to carry out the plan as originally developed. We hope during the coming year to call upon some if not all of the remaining courts.

Charles L. Hibbard, *Chairman*
Elbridge G. Davis
Frank L. Riley
Richard M. Walsh
Kenneth L. Nash

COMMONWEALTH OF MASSACHUSETTS

Administrative Committee of the District Courts

[Circular of] September 1, 1943

TO THE JUSTICES, CLERKS AND PROBATION OFFICERS
OF THE DISTRICT COURTS:

In conformity with the long established custom, this circular letter is being sent to all of the District Courts and to the Trial Justices.

Chapter 101 of the Acts of 1943 authorizes this Committee to prohibit the practice of motor vehicle tort cases, so-called, by Justices of the District Courts coming within the control of the Committee. The exact language of the Act is as follows:

"The Committee shall have power to prohibit the practice of motor vehicle tort cases, so-called, by the Justices of the District Courts other than the Municipal Court of the City of Boston."

Pursuant to the provisions of Chapter 682 of the Acts of 1941 and said Chapter 101 of the Acts of 1943, the following Requirement is hereby promulgated effective as of the date hereinafter set forth:

"REQUIREMENT No. XVII

(Effective January 1, 1944)

On and after the effective date hereof, no Justice of a District Court other than the Municipal Court of the City of Boston shall hear or try a motor tort case in any District Court of the Commonwealth if he shall be directly or indirectly retained, employed or practise as an attorney in motor tort cases."

IMPORTANT ACTS ENACTED IN THE CURRENT SESSION OF THE LEGISLATURE

[Here are listed 34 acts important to those engaged in district court business. Those accompanied by comment are as follows]:

Chapter 31. This chapter relates to the offense of fradulently procuring food, entertainment or accommodation from hotels, etc. The last paragraph in said chapter is the new part.

Chapter 244. This chapter is an important one as it clarifies the law respecting the detention, commitment and care of children between seven and seventeen years of age. It became effective May 6th. Our Committee has been interested in this measure because of the difficulty of interpretation and of formulating procedure under the Act passed two years ago. We have co-operated with others in the phrasing of the new chapter and believe it now to be an understandable law and one under which procedure as well as distribution of responsibility is clear.

Chapter 296. This chapter in effect repeals the so-called Fielding Act. It takes effect October 1st next. Thereafter District Courts will have original jurisdiction concurrent with Superior Courts in actions of tort arising out of the operation of a motor vehicle. Whether this legislation is wise or not, time will tell. It will probably affect the volume of business in the District Courts to a substantial degree. The supplementary changes effected by this chapter should be studied. Chapter 437 with an emergency preamble in effect gives immediate and concurrent jurisdiction in motor tort cases to the Superior Court.

RESOLVES:

(49) This resolve provides for a special commission, one of its divisions to make a special study of the present pension plan for Justices of the Courts.

(60) This resolve revives the special commission of 1941 to continue investigation and study of criminal laws of the Commonwealth.

(62) This resolve creates a commission to study the problem of drunkenness.

AN IMPORTANT CASE:

May we call the attention of the judges to the case of *Perry* v. *Hanover*, 1943 A. S. 1027.

APPOINTMENTS OF PROBATION OFFICERS

We find it necessary in this manner to clearly state a principle which governed our predecessors and has been accepted by us that appointments by the judges of relatives by blood or marriage to service as probation officers will not be approved. In very few instances have appointments been made without notifying the Committee informally at least of the proposed action and in fewer instances have the proposed appointments been made known to the public. Accordingly we have been able in some cases to suggest that the appointments be withdrawn and thus embarrassment has been avoided.

In this connection may we call your attention to the fact that our predecessor committee prepared and sent to the Justices on October 20, 1936 a set of rules which seemed to be required by the provisions of the Acts of 1936, Chapter 360, and a supplementary sheet in which were set up "probation personnel standards." These were republished in the circular letter dated January 16, 1939. We again in large part republish the same:

"Whenever a Justice of a District Court shall desire to appoint a probation officer, he shall send a statement to that effect to the Chairman of the Administrative Committee. The statement shall give the name of the Court in which the appointment will be made, the position to be filled, the name, residence, age, occupation and qualifications of the person recommended. The Chairman of the Administrative Committee will immediately thereafter make or cause to be made an investigation of the qualifications of such person. Thereafter a copy of said statement and a report by the Committee of its findings will be sent to the Board of Probation with a request for its opinion as to the suggested appointment, the Committee being obligated under the terms of Chapter 360 to consult the Board of Probation relative to such matters.

When such expression of opinion shall have been received, the Administrative Committee will advise the Justice of its approval or disapproval of the suggested appointment."

It seems to us in view of the control which has been vested in us that some standard be established which will furnish a measure by which applicants for the position of probation officer may be tested.

The standard which follows is comparatively high. The judges should approach it as closely as possible in making their choices. Naturally it must be flexible and we shall have to be realistic in applying it.

Briefly stated, a probation officer should be:

(1) Between 25 and 45 years of age;
(2) Have had a High School education or its equivalent at least;
(3) Have had some active experience in social work;
(4) Should be in sound health, mentally mature, emotionally balanced and possessed of great patience;
(5) Should have the qualities of leadership, be interested in his fellow men and able to work with others;
(6) Should have religious affiliations and character not open to attack;
(7) Should be respected by the police and co-operative with them and have the confidence of the public;
(8) Should have all the necessary qualities to perform the duties which may be roughly classified as coming under the three following designations:

(*a*) Investigation
(*b*) Supervision
(*c*) Rehabilitation

We feel that a probation officer should not be a deputy sheriff, police officer, clerk of court or court officer when it is possible to avoid such duplication of duties. Moreover in the large courts the position should be one of full-time service.

Suggestions

Some of the new legislation seems to call for the adoption of forms. For such assistance as it may prove to be, we suggest the following: [Here follow various forms].

We understand that the Requirement with reference to keeping a record of the hours during which the judge is at the court is regarded as unnecessary and burdensome. May we remind the judges that the Requirement issued in obedience to the legislative Act creating our Committee.

We understand further that some of the District Court officials feel that the Administrative Committee should act as a legislative committee as well. It is our judgment that we are an administrative committee and charged only with the administration of justice in the courts. We would be exceeding our authority and extending our activities beyond the area contemplated by the legislature if we presumed to act as legislative agents. There are now associations of all the officials of the District Courts competent and able to deal with any legislative problems.

The Committee expects to continue its visits to the courts until the list is completed.

Charles L. Hibbard, *Chairman*
Elbridge G. Davis
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COMMONWEALTH OF MASSACHUSETTS

ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

[Circular to be issued] January 3, 1944

TO THE JUSTICES, CLERKS AND PROBATION OFFICERS
OF THE DISTRICT COURTS:

We are sending herewith on separate sheet the statistical compilation of the work of the District Courts for the year ending September 30, 1943. A five-year comparison is as follows: (*The comparative table referred to appears on page 000 of this report of the Judicial Council.*)

Civil Writs Entered decreased 25,481, Contract actions 7,120, Tort 14,782 and Summary Process 4,358. Motor Tort cases decreased 13,260. The total number of removals to the Superior Court was 6,047, a decrease of 5,543.

It is interesting to note that the removals of motor tort cases were by plaintiff 1,860, a decrease of 1,822; by defendant 4,147, a decrease of 3,773; and by both parties 40, twelve more than last year.

Criminal cases begun show a sharp drop from 154,145 to 125,486. Automobile cases reflect a drop of 15,609. The reasons for this are of course well known to the officials of the courts.

Cases of Operating under the influence of Liquor decreased by 1,400.

Drunkenness cases show a decrease of 10,458.

Criminal Appeals show a decrease of 530. In number they again show less than 3% of the total criminal cases begun.

The number of juvenile cases increased 1,145 and this in the face of repeated public statements indicating an immense rise in juvenile delinquency.

The number of cases reported to the Appellate Division 149 compares with 304 of last year; and the appeals to the Supreme Judicial Court in these cases are 20 in number as compared with 23 last year.

In Small Claims the decrease was from 52,634 to 40,208. In the year 1936–1937 there were but 23,533 such claims entered.

Supplementary Process Cases decreased from 20,985 to 18,538.

Intoxicating liquor cases increased by one to 387.

The compilation of statistical returns supports the information we had received during the year as to declining business. The sharp decrease in criminal cases was undoubtedly due to a number of factors which in combination have effected the shrinkage. We are not optimistic enough however to conclude an overnight change in obedience to law.

The lessened number of civil actions was probably due to the sharp decrease in motor tort cases.

For the first time the small claims did not show an increase. Doubtless regular employment and high wages have affected these.

The record as to delayed decisions, four in number, is fairly good. It would have been better except for the court in Holyoke which reported three of such cases. The other was a Provincetown case, the Special Justice being from another court.

The sharp decrease in Appellate Division cases in interesting but no conclusions can be drawn from a single year.

We note that some of the courts still hold inquests though no longer required.

The increase in juvenile delinquency was not excessive, all things considered.

Much more information than the mere number of cases begun would have to be in hand to permit any accurate or unfavorable conclusions being drawn.

There will undoubtedly be further and perhaps an increasing shrinkage in the number of tort actions by reason of the repeal of the so-called Fielding Act.

Determination of Number of Simultaneous Sessions

The number of simultaneous sessions which may be held in each of the District Courts during the calendar year of 1944 shall be the same heretofore established.

A reminder of Requirements Numbered II and XI

These seem not to be memorized. Failure to comply with the provisions of No. XI has necessitated much correspondence the past year. These Requirements are as follows:

Requirement No. II

"Pursuant to the authority delegated to the Committee by Chapter 682 of the Acts of 1941, each clerk of a District Court shall report:

(1) To the Judge of such court on the 45th day after the completion of the tiral or hearings in every civil case and after the completion of the hearing on any interlocutory matters, including a motion for new trial where a decision has not then been rendered, and

(2) To the Chairman of the Administrative Committee of the District Courts on the 60th day after such completion all such cases and matters as have not been previously decided or disposed of. Such report shall contain the name and number of each such case, the name of the Justice, the nature of the matter undecided and the date of the completion of the trial or hearing."

Requirement No. XI

"In all cases of commitment to the State Farm, a summary of the record of the defendant shall be made by the Probation Officer of the court ordering the commitment. This summary, with any supplementary information, shall be transmitted with the mittimus whenever possible or forwarded to the Superintendent by the Probation Officer within seven (7) days from the date of commitment."

An Interesting Question

One of the courts asked our opinion as to whether a boy sixteen years of age arrested for drunkenness could request a release under sections 45–46 of chapter 272 of the General Laws.

It was our judgment the juvenile could not sign a binding request. However as soon as a complaint was issued, the probation officer could accept such a request and recommend the release. On general principles however we feel the juvenile should not be released. He should be impressed with the inherent dangers involved in drinking to excess and not be allowed to get the impression his offense was trivial.

Unemployment Compensation Contributions

Forms for notice and petitions for judgment under G. L. c. 151, sec. 15 (c) as amended by Chap. 373 of the Acts of 1943 will shortly be ready for distribution. In their drafting our Committee has participated.

The following statement has been prepared by the Division of Employment Security:

"The Legislature by its enactment of Chapter 373 of the Acts of 1943, has instituted a new practice and pleading procedure to be followed by the district courts in the entry of summary judgments for unemployment compensation contributions due the Commonwealth of Massachusetts under General Laws chapter 151A, the Massachusetts Employment Security Law.

The principal features of this new procedure are, briefly, as follows:

1. A twenty-day notice to be sent by the Director of the Division of Employment Security to an employer who is in default in the payment of contributions interest or penalties, and if the employer fails to make payment within the twenty-day period, a petition for entry of judgment is to be filed by the Director in the district court, on a return day subsequent to the expiration of said twenty-day notice.
2. The employer is given an opportunity to bring an assignment of error, within the time allowed in the district court for filing an answer in an action of contract, said assignment of error to state specifically the reasons why judgment should not be entered.
3. Judgment against the employer is to be entered by the court if no sufficient assignment of error is brought.
4. If an assignment of error is brought by the employer, an order of notice shall issue by the court and be served on the Director with a copy of the assignment of error.
5. Action on the assignment of error must be taken by the employer within forty-five days after bringing the same, by marking it up for hearing; otherwise a defult shall be recorded against the employer and judgment entered.

The above procedure is more fully set forth in Chapter 373 of the Acts of 1943, and it is suggested that reference be made to the statute itself as it contains many other features of the Law which cannot be set forth in brief comment."

Extracts from a Letter from Arthur G. Rotch, Commissioner, Department of Public Welfare:

Cases are beginning to come before our courts under G. L. Chap. 273 as amended by Chap. 489 of the Acts of 1943. We are sure the following extracts of a letter from Mr. Rotch will be informative and helpful:

"The last report indicates that you wish to know further how I felt about your accepting a compromise offer which appeared reasonable but was not the full amount expected under the scale of exemption and the rules of this Department. I realize fully that while the rights of the local boards of public welfare and of this Department to bring action under Chapter 273 are rather carefully prescribed, however the Old Age Assistance law, as most recently amended by Chapter 489 of the Acts of 1943, in no way interferes with your right to decide cases which finally come before you according to your own judgment. We shall have no hesitancy whatever in accepting your decision as final and binding on us and on the local board of pub-

lic welfare which brings the action. If, for example, you accept either in lieu of issuing a complaint, or as a compromise offer at the time of actual trial, an amount less than that requested by the local board in accordance with the rules of the Department, the actual amount thus made available is the actual amount we use in determining the Old Age Assistance payment.

It is our understanding that the law expects us:

1. To assure to all applicants for or recipients of Old Age Assistance a certain amount adequate to meet their needs. In the absence of such support from relatives, Old Age Assistance must be given until such support is actually secured.

2. In securing support from relatives, the law sets up certain basic exemptions for children. Above these exemptions, we assume that some support must be expected unless there are unusual circumstances which make it difficult or impossible for the son or daughter to make a reasonable contribution. In determining what a reasonable contribution should be, we felt that 25% of the first $500 surplus above the exempted amount and 50% of the remaining surplus was a reasonable sharing with the parent of non-exempt income.

In giving careful consideration to subsection 7 of Chapter 118A, Section 2A, General Laws as amended by Chapter 489 of the Acts of 1943, we have set up some definitions to insure adequate realistic consideration of what are actually unusual circumstances, so that we feel that the amounts which are arrived at under these scales as applied to the individual circumstances of each child, constitute a fair guide to a reasonable contribution in each case.

We have felt that to accept any smaller contributions than those arrived at under the foregoing principles would be to discriminate against those children who voluntarily meet their obligation. We have many instances in which sons and daughters indicate that their living expenses are high, that taxes are heavy, that they have committed themselves to heavy purchases of war bonds and insurance, retirement funds and many other similar expenses. We have been unable to see these as "unusual." We have defined as "unusual" such items as outstanding indebtedness occurring prior to application for assistance or prior to September 8, the effective date of the new provision; medical expenses beyond normal minor amounts; educational expenses of the son's or daughter's own children; unusual expenses for transportation and other unpredictable necessary expenditures over which the child had no choice.

We believe that these procedures are as flexible as can soundly be administered when the program involves 80,000 cases, all different and administered by 351 towns and cities. Reasonable, clear rules and procedures are obviously necessary if confusion is to be avoided and if reasonably uniform equitable treatment is to be assured to all persons involved.

All this, of course, is in explanation of the rules and policies the Department has issued for use by its staff and by local boards of public welfare."

Waivers of Notice to Permit Early Marriage

All the courts have been burdened with these applications. Some judges have found it necessary to have blanks at their houses. We think the following are salutary conditions which should be universally adopted:

(1) A fee should be required no matter where the application is made and granted.

(We have been advised that there have been instances of a judge not requiring the fee when the application was presented at his home.)

(2) If the parties are domiciled in different localities requiring two waivers, there should be the usual fee of one dollar for each. This recommendation has the approval of Mr. Theodore N. Waddell, Director of Accounts.

(3) If the parties or either of them have not attained twenty-one years of age, the presence and consent of at least one parent is desirable. In making this suggestion, we are not unaware of the provisions of G. L. ch. 207, sections 7, 24 and 25. Hasty marriages should not be encouraged.

(4) Substantial reasons should be offered for any waiver if the parties are domiciled in another state. . . .

Visits to the Courts

The committee has now visited nearly all of the District Courts. Conditions of travel have made it necessary to omit these visits as to some of the courts and also to shorten the length of time available for each visit in order that more courts might be included in a day's journey.

Charles L. Hibbard, *Chairman*
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REPORTS OF REGISTERS OF PROBATE FOR YEAR ENDING DEC. 31, 1942

(Table prepared by the Administrative Committee of the Probate Courts)

	Probate—Decrees																Divorces			Fees Collected				
	Original entries (New Cases)	Administrations Allowed	Wills allowed	Guardians Appointed	Conservators Appointed	Trustees Appointed	Accounts Allowed	Real Estate Sales	Real Estate Mortgages	Real Estate Partitions	Equity Decrees	Separate Support	Desertion and Living Apart	Custody	Other Decrees and Orders Entered	Papers Recorded	Original Entries (New Cases)	Decrees and Orders Entered		Probate	Divorce	Certificates and Copies	Total	Commitment, Insane Feeble Minded
																		Nisi	Others					
Barnstable	698	123	127	35	7	32	280	42	9	9	12	4	1	1	462	1,818	86	64	6	$2,454.90	$430.00	$1,161.00	$4,045.90	0
Berkshire	970	314	242	86	30	42	593	134	13	5	11	21	5	7	592	3,054	257	201	261	5,111.00	1,310.00	2,414.60	8,835.60	7
Bristol	1,861	683	515	144	33	78	748	288	12	13	29	53	11	6	1,224	6,442	573	454	154	8,969.00	2,855.00	4,484.38	16,308.38	4
Dukes	74	32	29	7	4	4	99	15	0	2	0	0	0	0	23	407	3	5	1	499.00	15.00	295.55	809.55	0
Essex	3,418	1,278	868	309	79	207	2,246	339	22	19	39	77	4	20	1,392	9,160	759	559	317	18,761.00	3,780.00	7,011.90	29,552.90	0
Franklin	371	108	101	29	8	20	371	59	1	4	3	4	0	0	187	2,329	80	54	14	2,140.70	400.00	608.85	3,149.55	0
Hampden	1,686	591	369	134	48	74	1,396	196	2	10	51	40	1	12	970	8,802	611	418	179	9,935.60	3,055.00	3,847.70	16,838.30	0
Hampshire	1,644	120	94	37	9	17	326	61	4	1	0	1	0	1	140	2,040	33	18	9	2,515.00	160.00	840.95	3,515.95	3
Middlesex	6,083	2,136	1,602	574	130	301	3,309	667	48	24	87	121	8	39	24,76	6 4,997	1,565	1,141	1,051	33,137.00	7,795.00	17,099.65	58,031.65	15
Nantucket	29	8	16	2	0	0	23	1	0	0	0	1	0	0	4	77	4	2	3	142.00	20.00	50.00	212.00	0
Norfolk	2,596	828	651	233	51	176	2,101	255	24	5	55	67	14	17	1,224	10,576	486	323	480	16,354.00	2,395.00	8,844.24	27,593.24	22
Plymouth	1,243	511	325	117	22	43	1,028	200	9	4	21	19	6	6	377	5,076	337	272	120	7,132.00	1,690.00	2,314.55	11,136.55	2
Suffolk	5,701	2,095	1,075	551	120	246	5,008	435	24	31	118	287	4	8	5,456	26,982	1,787	1,222	1,177	32,769.00	8,910.00	14,271.20	55,950.20	1,534
Worcester	3,349	1,265	815	336	106	154	1,239	457	24	23	58	150	6	5	1,889	10,309	923	633	329	15,658.00	4,605.00	5,430.40	25,693.40	12